



2025:DHC:11899-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 2642/2024**

BIJAY KUMAR DUBEY

.....Petitioner

Through: Mr. Abhay Kumar Bhargava,
Mr. Satyaarth Sinha, Ms. Shradha Mewati,
Advs.

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr. Tanveer Ahmed Ansari,
SPC with Mr Hilal Haider GP & Neha
Tiwari, Adv.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT (ORAL)

% **23.12.2025**

C. HARI SHANKAR, J.

1. Mr. Bhargava, learned Counsel for the petitioner, at the very outset, restricts his relief to prayers (i) and (ii) reserving his right qua prayer (iii) for further proceedings.

2. We, therefore, have to examine the relief on the right of the petitioner qua prayers (i) and (ii) in the petition.

3. The petitioner joined as Constable (GD) in the BSF on 21 December 2003. He was posted to the 82nd Battalion on 7 December 2005.



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4. From 18 June 2007 to 27 July 2007, the petitioner remained on earned leave.

5. While he was proceeding on earned leave, and riding his own motorcycle, the petitioner met with an accident *en route* to his hometown. As a result of which he became unconscious. He was admitted to a hospital, from where he was discharged on 21 July 2007. He was found as suffering from optic atrophy in both eyes. As a result, for the period 30 January 2008 to 30 July 2008, the petitioner was downgraded to low medical category in P-3(T-24) E-2(T-24).

6. The petitioner was assessed by a medical board on 15 November 2008. He was placed in category E-5. This categorization was approved by the Inspector General, Medical on 24 February 2009.

7. On 1 October 2009, a Review Medical Board¹ assessed the petitioner and found him suffering from 100% disability. The RMB found that he was unfit for further service in the BSF.

8. Following this, on 11 February 2010, the petitioner was retired on the ground of physical unfitness without pensionary benefits.

9. A Court of Inquiry² was convened to examine the case of the petitioner. The COI, in its recommendation dated 1 June 2009, found that the injuries suffered by the petitioner was attributable to Bonafide government duty and recommended that the pensionary benefits be

¹ "RMB" hereinafter

² "COI" hereinafter



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disbursed to him.

10. The petitioner was thereafter released service gratuity, retirement gratuity, CGEIS payments, leave encashment and SBPY (LIC) claim.

11. The petitioner applied on 7 April 2010, to the respondent, seeking invalid pension in terms of Rule 38 of the CCS (Pension) Rules 1972 which read, at the time, as under:

“38. **Invalid Pension –**

(i) Invalid pension may be granted if a Government servant retires from the service on account of any bodily or mental infirmity which permanently incapacitates him for the service.

(ii) A Government servant applying for an invalid pension shall submit a medical certificate of incapacity from the following medical authority, namely:-

(a) a Medical Board in the case of a Gazetted Government servant and of a non-gazetted Government servant whose pay, as defined in Rule 9 (21) of the Fundamental Rules, exceeds [Two thousand and two hundred rupees] per mensem.

12. The representation was rejected by the respondent on 9 September 2010.

13. Aggrieved thereby, the petitioner approached the High Court of Jharkhand by way of WP (S) 6102/2013. The High Court of Jharkhand disposed of the writ petition with liberty to the petitioner to apply afresh.



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14. The petitioner preferred a fresh representation on 26 October 2020, which was rejected by the respondent again on 12 March 2021. The reasons for rejection are thus provided, in the said communication:

(iv) As per Rule-4(b) (iv) of Guidelines of CCS (EOP) Rules that *“a person subject to the disciplinary code of the Central Armed Police Battalions, is ‘on duty’ when proceeding from his duty station to his leave station on returning to duty from his leave station at public expenses, that is, on railway warrant/LTC.”* Whereas, injury sustained by you cannot be treated as on duty as you had proceeded on leave by your own motor cycle and sustained injuries. Whereas to travel at public expenses is a mandatory condition to prove the attributability of disablement to Government service.

Secondly, as per the Rule 49 (2) (b) of CCS (Pension) Rules says that *“in the case of a Government servant retiring in accordance with the provisions of these rules before completing qualifying service of thirty-three years, but after completing qualifying service of ten years, the amount of pension shall be proportionate to the amount of pension admissible.* But in your case you have served for 06 years 01 months & 21 days and could not fulfil the essentiality of this provision. BSF is a Central Armed Force which functions as per procedure laid down in CCS Rules. Therefore you are not entitled for any type of pension. However, following has already been paid to you:-

4. As per records, both side railway warrants were availed by you while proceeding on 45 days E/L w.e.f 23.05.2006. Whereas, railway warrants or LTC were due in favour of you for the year 2007 but you neither demanded for any railway warrant nor claimed LTC in the year 2007 and it seems that you had no intentions to travel by Govt expenses in the year 2007. Persons proceeding on leave from TC & S Hazaribagh to Lohardaga are supposed to use private transport from TC & S Hazaribagh to Ranchi and then local train facility from Ranchi to Lohardaga but instead you proceeded on leave by your own motor cycle and sustained injuries.



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15. Aggrieved thereby, the petitioner has approached this Court.
16. We have heard Mr. Abhay Kumar Bhargava, learned Counsel for the petitioner and Mr. Tanveer Ahmed Ansari, learned SPC for the Union of India.
17. Mr. Bhargava has predicated his case on Rule 38 of the CCS (Pension) Rules, reproduced in para 11 *supra*.
18. Mr. Tanveer Ahmed Ansari, learned SPC for the respondents submits that the petitioner was not entitled to invalid pension as he had not completed 10 years of service as required by Rule 49(2) of the CCS(Pension) Rules.
19. Mr. Bhargava places reliance, in this context, on OM dated 12 February 2019 issued by Department of Pension & Pensioners Welfare³, which reads thus:

“No. 21/01/2016-P&PW (F)
Government of India
Ministry of Personnel, Public Grievances & Pensions
(Department of Pension & Pensioners' Welfare)

New Delhi, the 12th February, 2019

OFFICE MEMORANDUM

Sub: Grant of Invalid Pension under Rule 38 of the Central Civil Services (Pension) Rules, 1972 - Clarification regarding

The undersigned is directed to say that Rule 38 and Rule 49 of the Central Civil Services (Pension) Rules, 1972 have been amended vide Notification No. 21/1/2016-P&PW(F) dated 4th January, 2019



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(copy enclosed). The proviso to the amended Rule 38 of the CCS (Pension) Rules provides 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) was examined by the appropriate medical authority either before his appointment or after his appointment to the service or post and was declared fit by that authority for Government service, and

(b) fulfils all other conditions mentioned in this rule for grant of invalid pension.

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.

3. All Ministries Departments are requested that the above clarification may be brought to the notice of Heads of Department, Attached and Subordinate Offices. Controllers of Accounts, Pay & Accounts Offices, etc. under them.

4. Hindi version will follow.

Sd/-
(Harjit Singh)
Director”

20. Thus, the DOPPW OM dated 12 February 2019 clarifies that the requirement of 10 years qualifying service under Rule 49(2) of the CCS (Pension) Rules would not apply to a case of a person who was retiring on the ground of bodily or mental infirmity under Rule 38,



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while assessing his entitlement to invalid pension.

21. The aforesaid OM dated 12 February 2019 came up for consideration before the Supreme Court in *Union of India v. P A Thomas*⁴ in which the following order was passed on 14 March 2019:

“UPON hearing the counsel, the Court made the following

ORDER

In our previous order dated 10.5.2018, we had recorded that benefits as claimed have been conferred to the respondent, but a larger question did arise in the case, which was recorded in the said order in the following terms: -

"Rule 38 of the Central Civil Services (Pension) Rules, 1972 has been amended on 30.09.2016. By virtue of the amendment made persons who suffer disabilities while in service, if given the benefit under Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short, 'Disabilities Act') would henceforth be governed under the provisions of Section 47 of the Disabilities Act subject to production of a disability certificate from the competent authority as prescribed under the Act. However, Rule 38(2), as amended, provides that if such employees to whom the provisions of Section 47 of the Disabilities Act are not applicable and such person retires from service on account of bodily or mental infirmity, which permanently incapacitates him for service, he may be granted invalid pension or service gratuity in accordance with Rule 49 of the Pension Rules depending upon the length of his qualifying service on the date of retirement.

The matter needs clarification and in our considered view, by the Government. If on sustaining incapacity while in employment alternative employment under Section 47 of the Disabilities Act is guaranteed in cases permanent incapacity should grant of invalid pension be contingent on completion of any particular length of service. Rather would such length of service be relevant for computation of quantum of invalid pension.



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The learned Additional Solicitor General has submitted that the matter may be adjourned for a period of three months to enable the concerned authority in the Union of India to deal with the matter and pass appropriate orders/clarifications as may be considered necessary.

List the matter after three months”

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-

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

“(i) 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 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



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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-rules (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 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 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



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Pending interlocutory applications, if any, shall stand disposed of.”

22. Thus, the Supreme Court has clarified, in its decision in *P A Thomas* that the DOPPW OM dated 12 February 2009 was clarificatory in nature and would apply to cases which were pending on the date when the OM was issued.

23. It is well settled that clarificatory instructions apply retrospectively. Even otherwise, the decision in *P A Thomas* itself apply to the petitioners who are before the Supreme Court on that date.

24. As a result, it is not open to the respondents to rely on Rule 49(2) of the CCS(Pension) Rules to deny invalid pension to the petitioner.

25. We may note that, following the decision of the Supreme Court in *P A Thomas*, a learned Single Judge of the High Court of Punjab and Haryana has, in *Uma Shankar v. Union of India*⁵, held the petitioner in that case to be entitled to invalid pension and that the right of the petitioner would not be hit by Rule 49(2) of the CCS (Pension) Rules.

26. Insofar as the submission that the petitioner was not on duty at the time he suffered injury is concerned, that submission cannot lie in the mouth of the respondent in view of the findings of the COI that the petitioner was on *bonafide* government duty and that he was entitled



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to pensionary benefits.

27. Besides, the Supreme Court has also held, in ***Joginder Singh (Lance Dafadar) v. Union of India***⁶ that, if the injury is sustained by an employee when he is on leave, the employee would be entitled to disability pension.

28. As neither of the grounds on which the respondents have denied invalid pension to the petitioner can sustain, we hold that the denial of invalid pension to the petitioner is vitiated in law.

29. We accordingly hold that the petitioner was entitled to invalid pension as claimed by him.

30. Let the amount of invalid pension payable to the petitioner be computed from the date when he was retired on the ground of invalidity and release to the petitioner within 12 weeks from today. Failure to do so shall entail interest @ 12% p.a. till the date of actual payment.

31. The petition is allowed in the aforesaid terms.

C. HARI SHANKAR, J.

OM PRAKASH SHUKLA, J.

DECEMBER 23, 2025

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