



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

124

**CWP-9474-2026 (O&M)
Decided on :30.03.2026**

UNION OF INDIA

...PETITIONER

Versus

SMT SARISHTA DEVI

... RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI
HON'BLE MR. JUSTICE DEEPAK MANCHANDA**

PRESENT: Ms. Anju Sharma, Advocate for the petitioners.

HARSIMRAN SINGH SETHI, J. (Oral)

1. In the present writ petition, the challenge is to the order dated 12.09.2024 (Annexure P-1) passed by respondent No. 2-Armed Forces Tribunal, Regional Bench, Chandigarh (hereinafter referred to as 'the Tribunal') by which, the benefit of invalid pension has been granted in favour of the late husband respondent No.1 for his service rendered from 20.11.1977 to 20.05.1982.

2. Learned counsel for the petitioners-UOI submits that though, the disability of "Corrosive Stricture Oesophagus N-864 N-989" suffered by the respondent No.1 was assessed at less than 20% (15%-19%) for life but, the said disability was assessed as neither attributable to nor aggravated by the Military service. Despite this fact, the benefit of invalid pension has been granted by the Tribunal.

3. Learned counsel for the petitioners further submits that even the requisite qualifying service period of 10 years was not completed by the officer concerned, which is a mandatory condition enshrined in Regulation 198 of Pension Regulations for the Army –1961, wherein it is categorically stated that the minimum period of qualifying service actually rendered and required for grant of invalid pension is 10 years, which aspect has been

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ignored by the Tribunal while granting the benefit.

4. Further, another argument raised by the learned counsel for the petitioners is that benefit of invalid pension can only be granted prospectively from 04.01.2019 onwards keeping in view the instruction dated 16.07.2020 issued by Government of India whereas, the case of respondent No.1 related to a period prior to that.

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

6. As per the settled principle of law settled by the Hon'ble Supreme Court of India in SLP(C) No.20339 of 2011 titled as ***Union of India and others vs. P.A.Thomas, decided on 14.03.2019*** even if an officer is invalidated out prior to the completion of 10 years of service, he/she is entitled for the grant of invalid pension. 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

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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

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

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7. Once, as per the settled principle of law settled in **P.A. Thomas's case (supra)**, it is well established that the invalid pension is admissible even prior to the completion of 10 years of qualifying service. Consequently, the contention raised by the petitioners to assail the order of the Tribunal granting the benefit of invalid pension in favour of respondent No.1 is devoid of merit and cannot be sustained.

8. Qua the argument raised by learned counsel for the petitioners regarding applicability of instructions dated 16.07.2020, it may be noticed that a Coordinate Bench of this Court in ***CWP No.28442 of 2023 titled as Union of India and others vs. Sandeep Kumar and another, decided on 07.01.2025*** has already set aside the said condition imposed by the Government of India that the grant of invalid pension will be prospective in nature starting from 04.01.2019 onwards keeping in view the judgment in **P.A. Thomas's case (supra)**, which has also been noticed by the Coordinate Bench of this Court and held that Soldiers invalidated from service prior to 2019 are also entitled for the benefit of invalid pension.

9. As per the argument putforth by the learned counsel for the petitioners that the disability is neither attributable nor aggravated to military service, hence, grant of benefit in favour of respondent No.1 is incorrect, on being asked whether any such rule exists which prohibit grant of invalid pension in such cases, learned counsel for the petitioners has not been able to show any such rule.

10. Learned counsel for the petitioners-UOI has not been able to rebut the said settled principles of law as well as the facts mentioned hereinbefore.

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11. No other argument has been raised.
12. Hence, in the absence of any perversity being pointed out in the impugned order dated 12.09.2024 (Annexure P-) 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.
13. Accordingly, the present petition is disposed of.
14. Pending civil miscellaneous application(s), if any, stand disposed of.

(HARSIMRAN SINGH SETHI)
JUDGE

(DEEPAK MANCHANDA)
JUDGE

30.03.2026

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Whether speaking/reasoned: Yes/~~No~~

Whether Reportable: ~~Yes~~/No