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

(203)

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Date of Decision : May 11, 2026

Union of India and others

.. Petitioners

Versus

Sarti Devi and another

.. Respondents

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

Present: Mr. Rohit Verma, Senior Panel Counsel, for the petitioners.

Mr. Arshit Goel, Advocate, for respondent No.1.

HARSIMRAN SINGH SETHI J. (ORAL)

1. In the present writ petition, the challenge is to the order dated 20.12.2022 (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 respondent No.1- wife of Late Signalman Dharam Pal, who had rendered service for 09 years and 206 days before being invalided out from service due to the medical disability suffered by him and thereafter, ordinary family pension from 26.02.2016 onwards for life.

2. Learned counsel for the petitioners-UOI submits that though, the disability of "*SCHIZOPHRENIA 295*" was found to be suffered by the husband of respondent No.1 which was assessed at 50% for two years but, the said disability was assessed as neither attributable to nor aggravated by the Military service and despite this fact, the benefit of invalid pension has been granted by the Tribunal.

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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. i.e. husband of respondent No.1, 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 required for grant of invalid pension is 10 years, which aspect has been ignored by the Tribunal while granting the benefit.

4. Learned counsel for the petitioners further submits that the claim of husband of respondent No.1 for the grant of benefit of disability pension was rejected by the Division Bench of this Court while passing order in CWP No.384 of 1994 on 17.01.1994, which judgment has already been upheld by the Hon'ble Supreme Court of India vide SLP no.9306-1994 dated 19.04.1996 hence, claiming similar relief on similar ground could not have been agitated again by wife of the officer concerned as the same would amount to *resjudicata*.

5. Learned counsel appearing on behalf of respondent No.1, on the other hand, submits that the claim which was raised earlier with regard to grant of disability pension whereas, the claim raised was qua grant of invalid pension, which benefit has been granted by the Tribunal, for grant of which benefit, there is no requirement whether, the disability suffered is attributable or aggravated by the military service or not hence, for grant of benefit of invalid pension, no litigation was ever done and said issue was never dealt with in earlier round of litigation and therefore, same has rightly been granted by the Tribunal.

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6. We have heard learned counsel for the parties and have gone through the record with their able assistance.

7. The argument which is being raised by the counsel for the petitioners is that no fresh application could have been filed by the wife of the officer concerned for grant of invalid pension especially when after initial round of litigation, which had attained finality upto the Hon'ble Supreme Court of India where, the claim raised for grant of disability pension stood declined.

8. The said argument is to be tested by keeping in view the fact that whether, in the subsequent proceedings, the same relief is being sought or a different relief, which has been allowed i.e. the benefit of invalid pension.

9. Learned counsel for the petitioners has not been able to dispute the factum that in the earlier round of litigation which attained finality upto the Hon'ble Supreme Court of India, the claim raised was for grant of disability pension whereas, in the subsequent application filed, claim raised was for invalid pension, which reliefs are entirely different and the criteria/ingredient required for grant of disability pension and invalid pension are also different.

10. That being so, the objection being raised by the petitioners that the benefit being sought in the subsequent proceedings has already been denied by the authorities which decision has been upheld upto the Hon'ble Supreme Court of India is incorrect and cannot be accepted.

11. With regard to the issue raised for grant of invalid pension on the ground that minimum service required for grant of same has not been



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rendered by husband of respondent No.1, it may be noticed that 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 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 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



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(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.”

12. As for argument raised that since disability suffered by husband of respondent No.1 is neither attributable to and nor aggravated by military service and hence, same is a good ground to deny the benefit of invalid pension, it may be noticed that no such requirement is envisaged in any of the rule and regulation governing the service, and on being asked to point out any such provision which puts an embargo on grant of invalid pension, in case disability assessed is neither attributable to nor aggravated by military service, learned counsel for the petitioners has not been able to point out any such provisions.

13. Hence, in the absence of any perversity being pointed out in the impugned order dated 20.12.2022 (Annexure P-1) 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.

14. Accordingly, the writ petition is dismissed.

15. Civil miscellaneous application pending if any, also stands disposed of.

(HARSIMRAN SINGH SETHI)
JUDGE

May 11, 2026
harsha

(DEEPAK MANCHANDA)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No