

09.12.2025
Item No.22
Ct. No.01
RP

WPCT 152 of 2025

**The Union of India & Ors.
VS.**

**Gandeti Vasudeva Rao
(Ex Sep No.1396744-H)**

Mr. Moti Sagar Tiwari
Mr. Guddu Singh

...For Petitioners

PER, SUJOY PAUL, ACJ.:

- 1.** Mr. Tiwari, learned counsel alongwith Mr. Singh, learned counsel appears for petitioners.
- 2.** Heard on admission.
- 3.** The challenge in this petition filed under Article 226/227 of the Constitution of India is mounted to the order of Armed Forces Tribunal, Kolkata Bench dated 1st March, 2024 passed in OA 17/2023.
- 4.** The admitted facts between the parties before the Tribunal was that the applicant therein was enrolled in Indian Army as Sepoy on 01.10.1985 and discharged from service on 30.09.2009 on completion of the terms and conditions of his service. He received pension arising out of said service.
- 5.** The applicant therein was re-enrolled in Defence Service Corps (DSC) as General Duty for a period of 10 years. On 24.11.2017 he was diagnosed as suffering from

primary hypertension and placed in medical category P2 (Permanent) for life. On 25.10.2018 he was diagnosed “tourettes disorder and moderate depressive disorder” and placed in S2(Permanent). The Release Medical Board (RMB) held on 09.09.2019 has recorded certain disabilities without mentioning the percentage of disablement. Pursuant to RMB’s decision, the applicant therein was discharged from service with effect from 01.12.2019 on medical ground after having rendered 8 years 8 months 8 days’ service.

- 6.** The applicant therein filed the aforesaid OA after exhausting departmental remedy for grant of invalid pension.
- 7.** The Tribunal after completion of pleadings and after hearing both the parties allowed the application of the applicant and opined that the applicant therein is entitled to get Invalid Pension from the day next to the date of his invalidation from DSC service i.e. 01.12.2019 for life.
- 8.** Criticizing this finding the learned advocate submits that the Tribunal has committed an error in not noticing that the applicant therein was only declared to be invalid for Armed Forces and he was not declared unfit or permanently incapacitated for civil employment. Heavy reliance is placed on the circular dated 16th July, 2020 (Annexure R5) by contending that on the basis of this circular, a specific stand was taken before the

Tribunal that since there exists no finding that the applicant therein was invalid/incapacitated for civil employment as well, he was not entitled to get the pensionary benefits.

9. No other point is pressed by the learned counsel for the petitioners.

10. We have heard the learned counsels for petitioners at length. The Tribunal recorded its finding as under.

“9. Mr. Chaubey, learned Senior Panel Counsel, though has made an attempt to dispute the claim of the applicant for the grant of invalid pension also, however unsuccessfully, because in view of appellant RECT MITHILESH KUMAR in Civil Appeal No(s).16438-16440/2017 titled EX.RECT MITHILESH KUMAR VERSUS UNION OF INDIA & ORS decided on 27.10.2017 not only allowed to raise alternative prayer regarding grant of invalid pension under similar circumstances but also granted the same by the Hon’ble Apex Court in terms of Regulation 197 of the Pension Regulations for the Army-1961(Part-I) from the date of his discharge i.3. 24.07. In another case i.e.SLP(c)20330/2011 titled Union of India & Ors. versus P.A. Thomas, the Three Judge Bench of Hon’ble Apex Court had observed that the length of service should have no applicability for the grant of Invalid Pension when a person was discharged on medical grounds. Further while discussing Rule 38 of Central Civil Services (Pension) Rules, 1972, as amended on 30.09.2016, Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short, ‘Disabilities Act’), the Apex Court observed “that a government servant who retired 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 be granted invalid pension. It has been held in this judgment that the matter qua invalid pension is adequately covered and would be governed by the provisions contained under Section 38 and 49 of the Central Civil Services (Pension) Rules, 1972, which would be applied to all eligible cases.” A co-ordinate bench of this Tribunal in its order dated

25.07.2022 rendered in OA No.1169 of 2021 titled Ajay versus Union of India & others under similar circumstances has held that the applicant is entitled to the grant of invalid pension. The question of restricting the benefit of removal of minimum service condition only to post-2019 cases does not arise since RECT MITHILESH KUMAR's was a case of invalidation in 2013 and PA Thomas's was a case of invalidation in the year 1975.

10. In that case not only the invalid pension was granted to the recruit Mithilesh Kumar who admittedly had not completed the tenure of 10 years but also was allowed to raise alternative plea under the similar circumstances.

11. 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 Invalid Pension to the applicant from the day next to the date of his invalidation from DSC service, i.e., 01.12.2019 for life. The due and admissible arrears, which shall remain restricted to three years preceding the date of institution of his application i.e. 09.02.2023, 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 learned Sr.P.C./OIC Legal Cell failing which together with interest @ 8% from the date of this order till realization of the entire amount.

12. The Original Application is accordingly disposed of so also the pending Misc. Application(s) if any.

13. No order so as to costs."

11. A plain reading of order of the Tribunal shows that it is founded upon the judgment of Supreme Court in the case of P.A. Thomas (supra). In addition, the Tribunal considered the judgment in the case of Mithilesh Kumar and the order of Tribunal passed in OA No.1169 of 2021 (Ajay vs. Union of India & Ors.). The Tribunal candidly recorded that the *ratio decidendi* of both cases covered the case in hand and, accordingly, whether or nor the

employee has rendered 10 years service, he is entitled to get invalid pension when he was discharged from service on medical ground after rendering 8 years 8 months 8 days service.

12. The sheet anchor of argument of the petitioners is based on the aforesaid circular dated 16th July, 2020. This administrative instruction by no stretch of imagination can operate retrospectively. An administrative instruction cannot take away the right which accrued before its issuance.

13. The Hon'ble Supreme Court in the case of **V. Vincent Velankanni vs. Union of India and Ors., 2024 SCC OnLine SC 2642** observed:-

"It is trite law that an Office Memorandum/Government Order cannot have a retrospective effect unless and until there is an express provision to make its effect retrospective or that the operation thereof is retrospective by necessary implication."

(Emphasis Supplied)

14. The Hon'ble Supreme Court in the case of **Bharat Sanchar Nigam Limited and Ors. vs. Tata Communications Limited, (2022) 20 SCC 96** opined as under:-

"The power to make retrospective legislations enables the legislature to obliterate an amending Act completely and restore the law as it existed before the amending Act, but at the same time, administrative/executive orders or circulars, as the case may be, in the absence of may be legislative

competence cannot be made applicable with retrospective effect.”

(Emphasis Supplied)

- 15.** In this view of the matter, the said circular dated 16th July, 2020 which was issued after discharge of the applicant will not improve the case of the department.
- 16.** In our opinion, the Tribunal has considered the prayer of the applicant therein on permissible parameters and rightly applied the judgments of the Supreme Court passed in similar matters. Since the Tribunal has taken a plausible view which does not warrant any interference, the admission is declined and the petition is dismissed.
- 17.** Urgent Photostat certified copy of this order, if applied for, be delivered to the learned advocates for the parties, upon compliance of all formalities.

[SUJOY PAUL, ACJ.]

[PARTHA SARATHI SEN, J.]