HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Civil Writ Petition No. 5477/2024

Ex Sepoy Om Prakash S/o Shri Rupa Ram, Aged About 58 Years, R/o Village- Dhirasar, Post Office Gudarwas, Tehsil - Fatehpur, Dist. - Sikar, (Raj.).

----Petitioner

Versus

1. The Union Of India, Through Secretary, Ministry Of Defence, South Block, New Delhi.
2. P.C.D.A. (Pensions), Allahabad (U.P.)
3. The OIC Records (South), ASC Records (South), Bangalore, Pin - 560007

----Respondents

For Petitioner(s) : Mr. Aslam Khan
For Respondent(s) : Mr. Gaurav Jain

HON'BLE MR. JUSTICE SUDESH BANSAL
HON'BLE MR. JUSTICE RAVI CHIRANIA

Order

1.	Date of conclusion of Arguments	06.05.2026
2.	Date on which the judgment was reserved	06.05.2026
3.	Whether the full judgment or only operative part is pronounced	Full
4.	Date of pronouncement	08.06.2026

Per Hon’ble Ravi Chirania, J.

1. The core issue that arises for consideration in the present writ petition is, as to whether petitioner is eligible and entitled to get disability/ invalid pension under Regulations 197 and 198 of the Pension Regulations for the Army, 1961 (hereinafter referred to as the 'Army Pension Regulations'); and, if yes, from which date such pension is payable?

2. The aforesaid issue arises in backdrop of the following factual matrix:-

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2.1 Petitioner is an ex-Sepoy of the Army. He was enrolled in the Army Service Corps on 13.06.1984 and was discharged from service by respondents vide order dated 01.06.1995, considering him as an undesirable soldier under Rule 13(3), Item III(v) of the Army Rules, 1954.

2.2 Petitioner challenged the order of discharge by filing S.B. Civil Writ Petition No.13230/2009 before the High Court and made following prayers:-

> *"(i) to issue an appropriate writ, order or direction in the nature thereof thereby quash and set aside the discharge of the petitioner from service and keep the petitioner on supernumerary strength till his completes pensionable service of 15 years;*
> *(ii) to direct the respondents to grant disability/invalid pension to the petitioner for the service rendered by him;*
> *(iii) to direct the respondents to bring the petitioner before a duly constituted medical board to assess his disablement;*
> *(iv) Any other writ, order or direction which this Hon'ble Court may deem just and proper in the facts and circumstances of the case may also be passed in favour of the petitioner."*

2.3 The aforesaid writ petition was transferred by the High Court to the Armed Forces Tribunal (hereinafter referred to as the 'AFT'), as the first jurisdiction to adjudicate the issues relating to challenge to the discharge order, claim for disability/ invalid pension and constitution of a Medical Board for assessment of petitioner's disability, etc. vest in the AFT. After transfer of the original record, the matter was registered before the Regional Bench of the AFT at Jaipur as Transfer Application No. 113/2010.

It is necessary to clarify here that indeed this was not a Transfer Application, rather, was the original application filed by petitioner before the AFT, however, same was registered in the nature of a Transfer Application.

2.4 The Original Application before the AFT was duly replied by respondents, and apart from contesting the application on merits, respondents also raised a ground of delay in filing the application. After considering the matter, the learned AFT, vide its final order dated 16.08.2022, dismissed the Original Application of petitioner as a whole. Aggrieved by the final order passed by the AFT, petitioner has preferred the present writ petition, asking for following reliefs:-

> *"(i) By issuing an appropriate writ, order or direction the impugned order dated 16/08/2022, passed by the Hon'ble Armed Forces Tribunal, Regional Bench at Jaipur in Transfer application No. 113/2010(WP No.13230/2009), may kindly be quash and set aside;*
> *(ii) By issuing an appropriate writ, order or direction the Transfer application filed by the applicant petitioner may kindly be allowed;*
> *(iii) Any other appropriate order or directions which this Hon'ble Court may deem just and proper in the facts and circumstances of the case may also be passed in favour of the humble petitioners along with cost."*

3. It is to be noted here that in the original application as also in the instant writ petition, petitioner made a prayer to quash his order of discharge. However, during the course of arguments, learned counsel for the petitioner, having instructions, confined his prayer for grant of disability/ invalid pension to petitioner as per Regulations 197 & 198 of the Army Pension Regulations from the date of his discharge, i.e., 01.06.1995. As far as the prayer of petitioner for constitution of a Medical Board to assess the disability is concerned, since after his discharge from service w.e.f. 01.06.1995, about a long period of 31 years has passed, therefore, due to a bit long passage of time, such prayer has

virtually rendered redundant, hence, the issue of grant of disability/ invalid pension to petitioner or not, shall be considered as per the medical reports and other documents available on record.

4. Learned counsel for the petitioner, in order to establish the eligibility and entitlement of petitioner for disability/ invalid pension, made following submissions:-

4.1 That petitioner served in the Army for a period of more than 10 years (the actual period of service is 10 years, 11 months and 18 days from 13.06.1984 to 01.06.1995). During this period of Army service, petitioner suffered disability, primarily on account of his posting at stations having adverse climatic conditions and hostile weather. When the petitioner fell sick, he was hospitalized in an Army hospital, Delhi Cantt. and remained admitted there from 04.11.1993 to 12.11.1993, where he was diagnosed with a disease called Radial Nerve Palsy (Rt) (hereinafter referred to as "RNP (Rt)"), a neurotic disorder. In the discharge slip dated 12.11.1993, issued from the Army Hospital, Delhi Cantt. which is Annexure-2, disease of petitioner is mentioned. Again, petitioner remained hospitalized in the Military Hospital, Jodhpur for the period from 10.12.1993 to 17.01.1994 on account of suffering from the same disease, i.e., RNP (Rt), which was mentioned in his discharge slip (Annexure-3). Thereafter, petitioner got hospitalization on 31.05.1995, i.e., a day before issuance of his order of discharge from service dated 01.06.1995, however, this time respondents miserably failed to get conduct a medical examination of the petitioner to assess his disability, and without subjecting him to any Release Medical Board (RMB), he was

discharged from service, vide order dated 01.06.1995 (Annexure-1).

It has been highlighted by learned counsel for the petitioner that in the certificate of service of petitioner/ discharge order (Annexure-1), the relevant column of medical category of petitioner was left blank, to conceal/ hide the disease of petitioner and actual reason of his discharge from service. Thus, the submission of learned counsel for the petitioner is that petitioner had suffered disability/ sickness during the tenure of his Army services, which was attributable to and aggravated by service. Yet, merely to deny invalid pension to petitioner as per Regulations 197 & 198, he was neither subjected to an RMB for no good reason and his disease, diagnosed during previous hospitalization twice, was not mentioned in the column of medical history of petitioner. His submission is that respondents miserably failed to explain or justify the reason for not subjecting the petitioner to an RMB before his discharge from service, more particularly when he has been diagnosed with the disease, RNP (Rt), during his earlier hospitalization in Army Hospital, Delhi Cantt., and Military Hospital, Jodhpur. Hence, according to learned counsel for the petitioner, it is a clear case of discharge of petitioner from service on account of his disability, and since the petitioner has served in the Army for a period of more than 10 years, he should be granted disability/ invalid pension as per Regulations 197 & 198 of the Army Pension Regulations.

It has been pointed out that discharge of the petitioner from service on the ground of having five red ink entries and pursuant to the show cause notice dated 01.05.1995, is merely an

eyewash, whereas indeed discharge of petitioner was due to suffering sickness and disability. It is true that prescribing more than four red ink entries may place an individual concerned in a grey area, where he can be considered for discharge, but it cannot be treated as a mandate to suffer the fate of discharge. It is one thing to fall within category of consideration, and it is an entirely different thing to be found fit for discharge, merely on the basis of having four or more red ink entries. Secondly, non-conducting of a medical examination of petitioner through RMB, before his discharge from service w.e.f. 01.06.1995, particularly in the light of his medical history of previous hospitalization twice, itself indicates malice and negligence on the part of respondents, to hide the true reason of his discharge, which was indeed on account of catching disability to petitioner. Hence, it has been submitted by learned counsel for the petitioner that even while denying to grant indulgence in the order of discharge of petitioner, at least, he deserves to be granted invalid pension.

4.2 Other submission of learned counsel is that although petitioner was punished five times and was awarded five red ink entries, but considering the nature of punishments and the contemporary period during which they were awarded (one punishment was awarded in the year 1991 and four punishments were awarded between 24.01.1994 and 01.12.1994, which is the period during which the petitioner was suffering from the disease, RNP (Rt), a neurotic disorder), petitioner may not be held dis-entitle for disability/ invalid pension, because it has been well established by a catena of judgments delivered by the Hon’ble Supreme Court that mere prescribing of four red ink entries is not

a "*Lakshman Rekha*", which, if crossed, would by itself render the individual concerned undesirable or unworthy of retention in the force.

In support of his submission, learned counsel for the petitioner has referred a judgment delivered in case of **Veerendra Kumar Dubey v. Chief of Army Staff [(2016) 2 SCC 627]**, which has been followed by the Hon'ble Supreme Court in case of **Vijay Shankar Mishra v. Union of India [(2017) 1 SCC 795]**. The *ratio decidendi* has again been affirmed and reiterated by the Hon'ble Supreme Court recently in case of **Amarendra Kumar Pandey v. Union of India [(2024) 15 SCC 401]**.

Submission of learned counsel for the petitioner is that the learned AFT erred and committed a jurisdictional error, for not considering the issue of entitlement of petitioner for invalid pension, for which petitioner made an alternative prayer (Prayer No. ii) in his original application, even in case of affirmation of the order of discharge, therefore, to this extent, the order of learned AFT be set aside and respondents be directed to award invalid pension to petitioner.

4.3 Further submission of learned counsel for the petitioner is that as far as the objection of respondents regarding delay in approaching by petitioner to assail the order of discharge, or for claiming invalid pension is concerned, the same does not come in the way, because once petitioner has earned entitlement for invalid pension, same may not be denied merely on the ground of delay.

5. In counter, learned counsel appearing on behalf of respondents, while supporting the final order of the AFT, made following submissions:-

5.1 Petitioner was awarded five punishments at different points of time, which rendered him an inefficient and undisciplined soldier in the Army. Hence, he was rightly discharged from service vide order dated 01.06.1995, and the order of his discharge has been rightly affirmed by the learned AFT, so also his prayer for invalid pension was not allowed.

5.2 Prior to his discharge, petitioner was served with a show cause notice and was accorded due opportunity of hearing, so it is not a case of breach of principles of natural justice.

5.3 Petitioner filed the writ petition before the High Court in the year 2009, i.e., after a gross delay of about 14 years from the date of his discharge from service on 01.06.1995. Therefore, on account of inordinate delay in challenging the order of discharge or alternatively claiming for grant of invalid pension, petitioner was declined any relief and learned AFT has not committed any error in dismissing the original application of the petitioner as a whole and order of learned AFT warrants no interference.

To buttress his submissions, learned counsel for respondents has placed reliance on the judgments delivered by the Hon'ble Supreme Court in cases of **C. Jacob v. Director of Geology and Mining Indus. Est. [(2008) 10 SCC 115]**, **Ex. Sepoy Madan Prasad v. Union of India [(2023) 9 SCC 100]** and **Union of India v. Ex. Sep. R. Munusami [AIR (2022) SC 3449]**.

6. Heard learned counsel for the parties and perused the material available on record.

7. We have noticed that it is not in dispute that petitioner was discharged from service in the Army, vide order dated 01.06.1995 and, prior thereto, he had completed his tenure of service for more than 10 years (the actual period of service is 10 years, 11 months and 18 days from 13.06.1984 to 01.06.1995). It is also evident from the record and cannot be a disputed fact that, during the course of his service in the Army, petitioner remained hospitalized twice, from 04.11.1993 to 12.11.1993 at Army Hospital, Delhi Cantt., and from 10.12.1993 to 17.01.1994 at Military Hospital, Jodhpur. Annexures-2 and 3 are the discharge slips of petitioner issued by both hospitals, and the same form part of the undisputed record and are not in question. The reason for the hospitalization of petitioner was that he came to be in sufferance of a disease, RNP (Rt), which was diagnosed and mentioned in both the discharge slips dated 12.11.1993 and 17.01.1994 (Annexures-2 & 3).

8. It is also an admitted and undisputed fact that, before issuance of the discharge order dated 01.06.1995, petitioner was not subjected to RMB, and respondents have miserably failed to furnish any explanation or justified reason for non-conducting of medical examination of petitioner through RMB prior to his discharge, more particularly when the petitioner had remained hospitalized on two previous occasions on account of suffering from the disease, RNP (Rt), and furthermore, he was admitted in the hospital a day before of his discharge from service.

It is noteworthy that in the order of discharge/ certificate of service of petitioner (Annexure-1), the relevant column pertaining to his medical history has been left blank and unfilled by

respondents. On the face value, non-conducting of medical examination of petitioner through RMB by respondents, itself shows malice and negligence on their part. Further, non-mentioning of the medical history of petitioner in the discharge order, in the relevant column, further substantiates that the disease of petitioner was sought to be concealed/ hide, and was deliberately not disclosed by respondents, for the reasons best known to them.

9. It is not a disputed fact that, at the time of entry of petitioner in the service, the disease of RNP (Rt) was not detected and this disease was detected and diagnosed to petitioner after rendering military service for more than 8–9 years. Hence, it shall be deemed, and as per the rules also, that the disability/ disease suffered by petitioner arose while in service and same is attributable to and aggravated by military service.

10. All the above factual aspects, which are apparent and stand established from the documents and record, indicate that the disability/ disease suffered by petitioner was also a reason for his discharge from service, and his discharge was not solely on account of the five red ink entries awarded to him.

11. We are conscious that, although before this Court learned counsel for the petitioner has not pressed the prayer challenging the order of discharge, nevertheless, all the above-noticed factors and shortfalls on the part of respondents, have been observed by this Court for considering the prayer of petitioner regarding his entitlement for invalid pension. We find that the learned AFT committed manifest illegality and fell into error in exercising of its jurisdiction by not considering all the above-referred factors,

which are relevant and have a direct nexus with the issue of eligibility and entitlement of petitioner for invalid pension, for which petitioner made a specific prayer. Such aspects ought to have been considered by the AFT before dismissing the original application of petitioner as a whole, even though the order of discharge of petitioner from service was not interfered with by the AFT on merits. Hence, to the extent of non-advertence by the AFT to the issue of entitlement of petitioner for invalid pension and non-consideration of the relevant evidence and factors available on record, dismissing the original application of petitioner as a whole and declining any relief to petitioner, may not be countenanced or affirmed. In our considered opinion, the impugned order passed by the learned AFT suffers from manifest illegality and jurisdictional error, at least to the aforesaid extent, and warrants interference by this Court in exercise of its writ jurisdiction.

12. Regulations 197 and 198 of the Army Pension Regulations deal with the subject matter of invalid pension/ gratuity for Army personnel and prescribe the circumstances in which the same are admissible. For ready reference, it would be apposite to reproduce both the Regulations hereunder:-

> ***"INVALID PENSION/GRATUITY WHEN ADMISSIBLE***
> *197. Invalid pension/gratuity shall be admissible in accordance with the Regulations in this chapter, to*
> *(a) an individual who is invalided out of service on account of a disability which is neither attributable to nor aggravated by service;*
> *(b) an individual who is though invalided out of service on account of a disability which is attributable to or aggravated service, but the disability is assessed at less than 20%, and*
> *(c) a low medical category individual who is retired/discharged from service for lack of alternative employment compatible with his low medical category."*

MINIMUM QUALIFYING SERVICE

198. The minimum period of qualifying service actually rendered and required for grant of invalid pension is 10 years. For less than 10 years actual qualifying service invalid gratuity shall be admissible."

13. A perusal of Regulation 197 (a) shows that invalid pension/ gratuity shall be paid to an individual who is invalided out of service on account of a disability that is neither attributable nor aggravated by military service. Regulation 197(b) further provides that an individual who is though invalided out of service on account of a disability attributable to or aggravated by service, but where such disability is assessed at less than 20%, and 197 (c) who is placed in a low medical category shall also be governed by the said provision.

Regulation 198 stipulates that a minimum 10 years qualifying service is required for grant of invalid pension/ gratuity in the Army.

14. We must appreciate the fact that the provisions for grant of disability/ invalid pension are in the nature of a beneficial scheme, intended to provide succor to servicemen in hard times, who have been discharged from service after having served the nation with devotion and dedication. Therefore, a liberal approach must be adopted, while construing these beneficial provisions relating to the grant of disability/ invalid pension or gratuity. Following such intendment of the beneficial scheme of disability pension, Hon'Ble Supreme Court recently in case of **Rajumon T.M. v. Union of India [AIR (2025) SC 2804]** observed that "*a much more liberal view ought to be adopted while dealing with the cases of discharge of servicemen from service on account of suffering from Schizophrenia as they may face several impediments and*

difficulties in proving the casual connection of the said disease with the military service."

15. It is not in dispute that petitioner had rendered service for a period of 10 years, 11 months and 18 days prior to his discharge and, therefore, he fulfills the requirement of minimum qualifying service in terms of Regulation 198 for consideration of his case for the grant of invalid pension.

16. For entitlement of petitioner for invalid pension, his case falls either under Regulation 197(b) or 197(c). We have already noticed and observed in the foregoing paragraphs that the factum of sufferance of petitioner with the disease, RNP (Rt), is well evident, and such disease is attributable to and aggravated to petitioner by service. It has also been found that the discharge of petitioner from service was fundamentally due to his sufferance from such disease/ disability, though the same was not specifically mentioned in his discharge order. The factum of hospitalization of petitioner twice, on account of suffering from such disease and the diagnosis thereof, are not disputed issues. Non-subjecting petitioner to RMB before his discharge, despite his previous medical history, is one of the biggest and most serious shortfall on the part of respondents. Be that as it may, the factum of disability suffered by petitioner during service is not/ cannot be a disputed fact.

17. As far as assessment of the percentage of disability of petitioner is concerned, it was incumbent upon respondents to subject him to RMB, which was not done before his discharge from service on 01.06.1995. Now, a long period of about 31 years has passed and, therefore, at this belated stage, medical examination

of petitioner by way of constitution of a fresh Medical Board to assess the percentage of his disability, would certainly not yield any useful purpose. Therefore, based on the material on record, we are of the considered opinion that the sufferance with the disease/ disability of RNP (Rt) to petitioner arose during the tenure of his Army service, and coupled with the factum of his completion of more than 10 years of qualifying service prior to his discharge, make the petitioner eligible and entitled for invalid pension under Regulations 197 and 198 of the Army Pension Regulations.

18. It is true that before discharge of petitioner from service, he was awarded five red ink entries (one punishment was awarded in the year 1991 and four punishments were awarded between 24.01.1994 and 01.12.1994). As has been noticed and observed hereinabove, four punishments were awarded to petitioner within a span of one year, i.e., during 1994, and at that point of time, petitioner was suffering from the disease RNP (Rt), a neurotic disorder. Therefore, it is a matter of drawing an inference and presumption that infractions in discharging his duties with due discipline during the said period, were primarily on account of petitioner's neurotic disorder and certainly may not be considered intentional or deliberate acts on his part. As such, the matter ought to have been dealt with somewhat sympathetically. This may be the reason that petitioner accepted the said punishments and did not challenge the same. The legal position is well settled that awarding four or more red ink entries cannot be considered as a mandate for discharge from service, although the incumbent may come within the zone of consideration for discharge. Thus,

the discharge of petitioner from service solely on the basis of awarding him five red ink entries does not stand in consonance with the settled proposition of law.

Nevertheless, since petitioner has not pressed his prayer challenging the order of discharge, and has rather confined his prayer for grant of invalid pension, this Court has no occasion, nor deems it appropriate, to enter into the issue of legality/ illegality of the discharge of petitioner from service. However, so far as his entitlement for disability/ invalid pension is concerned, which he has earned under Regulations 197 and 198, the same certainly cannot be denied merely on the ground that he had been awarded five red ink entries.

19. Hon'ble Supreme Court, in the oft-quoted judgment delivered in the case of **Veerendra Kumar Dubey** (*supra*), while considering the discharge of an incumbent from service on the basis of awarding four red ink entries, and construing the provisions of Rule 13 of the Army Rules, 1954, together with a letter issued by Army Headquarters dated 28.12.1988, held and observed in paragraphs 10 and 16 as under:-

> *"10. The Government has, as rightly mentioned by the learned Counsel for the Appellant, stipulated not only a show-cause notice which is an indispensable part of the requirement of the Rule but also an impartial enquiry into the allegations against him in which he is entitled to an adequate opportunity of putting up his defence and adducing evidence in support thereof. More importantly, certain inbuilt safeguards against discharge from service based on four red ink entries have also been prescribed. The first and foremost is an unequivocal declaration that mere award of four red ink entries to an individual does not make his discharge mandatory. This implies that four red ink entries is not some kind of Laxman rekha, which if crossed would by itself render the individual concerned undesirable or unworthy of retention in the force. Award of four red ink entries simply pushes the individual concerned into a grey area where he can be considered for discharge. But just because he qualifies for such discharge, does not mean that he must necessarily suffer that fate. It is one thing to qualify for consideration and an entirely different thing to be found fit for discharge. Four red ink*

entries in that sense take the individual closer to discharge but does not push him over. It is axiomatic that the Commanding Officer is, even after the award of such entries, required to consider the nature of the offence for which such entries have been awarded and other aspects made relevant by the Government in the procedure it has prescribed.

16. The procedure prescribed by the Circular dated 28-12-1988 far from violating Rule 13 provides safeguards against an unfair and improper use of the power vested in the authority, especially when even independent of the procedure stipulated by the competent authority in the Circular aforementioned, the authority exercising the power of discharge is expected to take into consideration all relevant factors. That an individual has put in long years of service giving more often than not the best part of his life to armed forces, that he has been exposed to hard stations and difficult living conditions during his tenure and that he may be completing pensionable service, are factors which the authority competent to discharge would have even independent of the procedure been required to take into consideration while exercising the power of discharge. Inasmuch as the procedure stipulated specifically made them relevant for the exercise of the power by the competent authority there was neither any breach nor any encroachment by executive instructions into the territory covered by the statute.

(Emphasis Supplied)

The *ratio decidendi* expounded in the aforesaid judgment, was followed and reiterated by the Apex Court in the cases of **Vijay Shankar Mishra** (*supra*) and **Amarendra Kumar Pandey** (*supra*), hence, continues to hold the field.

20. Coming to the objection of delay on the part of petitioner to assail the order of his discharge or to claim the invalid pension, as raised by respondents, the record reveals that petitioner initially approached the High Court by way of filing S.B. Civil Writ Petition No. 13230/2009, assailing the discharge order dated 01.06.1995 and therein, also made Prayer No.(ii), for grant of invalid pension. Indeed, petitioner had earned his entitlement for invalid pension under Regulations 197 and 198 at the time of his discharge and, therefore, merely on account of delay, he cannot be held dis-entitled to get invalid pension. Since the prayer challenging the discharge order has not been pressed by learned counsel for the

petitioner before this Court, the issue of delay in that regard does not fall for consideration. Consequently, the objection raised by respondents on that count has become redundant. So far as the prayer of petitioner for grant of invalid pension is concerned, his claim cannot be treated as a stale claim and further, denial of pension is a continuing cause of action. Therefore, the judgment delivered by the Hon'ble Supreme Court in case of **C. Jacob** (*supra*) does not support the objection raised by respondents and cannot be relied upon to deny invalid pension to petitioner.

21. Learned AFT erred in not considering the case of petitioner for grant of invalid pension and, rather entered into the arena of petitioner's claim for regular pensionary benefits, for which completion of 15 years of qualifying service is mandatory. However, for the purpose of invalid pension, completion of 10 years of qualifying service is sufficient, which requirement had admittedly been fulfilled by petitioner. Hence, denial of invalid pension to petitioner by learned AFT on such an erroneous premise and on the basis of foreign considerations, cannot be appreciated.

22. In case of **C. Jacob** (*supra*), the employee had remained unauthorizedly absent for a long period of about twenty years and thereafter, suddenly woke up to raise a claim for being taken him back in service. The High Court, in the backdrop of fact that employer could not produce the inquiry record, drew an adverse inference against the employer and directed for reinstatement of the employee with back wages. Further, since the employee had attained the age of superannuation, he was also held entitled for pension on the premise that it should be presumed that he

rendered qualifying service for a period of twenty years. In that factual scenario, Hon'ble Supreme Court granted indulgence and, while setting aside the order of the High Court, observed that a stale claim may not be revived. The Apex Court further held that, since the employee indeed had not rendered qualifying service of twenty years and remained absent from service during that period, hence he was not held entitled for pension as well.

The factual matrix of the present case is entirely distinguishable. Here, petitioner suffered disability during his service in the Army, which has been found to be attributable to and aggravated by service. Further, it is indisputable that he had completed qualifying service of more than ten years prior to his discharge and, therefore, had earned his eligibility and entitlement for invalid pension. Hence, merely on account of approaching the Court after some delay, it would not be justifiable to deny or reject his entitlement for invalid pension. The present case is not case of revival of a stale claim, but is a case of continuing cause of action, so far as the prayer for invalid pension is concerned.

23. In case of **Ex. Sep. R. Munusami** (*supra*) as relied upon by learned counsel for respondents, the employee was placed in a low medical category and his disease was neither found attributable to nor aggravated by military service. Further, his disability was assessed at the rate of 20% for a period of two years only. In that factual backdrop, and in view of the delay of about 20 years, he was not found entitled for disability pension.

Owing to the vast difference in the factual scenario, the judgment delivered in case of **Ex. Sep. R. Munusami** (*supra*) does not apply to the facts of the present case, for the reason that

in the present case, the eligibility and entitlement of petitioner for invalid pension are apparently well evident and stand established on record, as has been observed by this Court in the foregoing paragraphs.

24. The next issue that arises for consideration is as to from which date, the petitioner is entitled to be awarded invalid pension.

25. As we have observed hereinabove that petitioner had indeed earned his entitlement for invalid pension on the date of his discharge from service, i.e.,01.06.1995, however, he put forth his claim for awarding invalid pension in the year 2009 by way of filing S.B. Civil Writ Petition No. 13230/2009. Since the denial of pension is a recurring/ successive wrong, giving rise to a continuing cause of action, therefore, delay does not come in the way to grant the relief of invalid pension, more particularly when the entitlement of petitioner stands established. Hon'ble Supreme Court in case of **Union of India v. Tarsem Singh [(2008) 8 SCC 648]**, held and observed that in delayed claim relating to disability pension, arrears should have been restricted to three years prior to the date of filing of the Writ Petition. The *ratio decidendi* has been followed recently by the Apex Court in case of **Union of India v. SGT Girish Kumar**, arising out of Civil Appeal Nos.6820-6824/2018 decided vide judgment dated 12.02.2026, reported in **[(2026) SCC OnLine SC 194]**.

26. In an another judgment delivered by Hon'ble Supreme Court in case of **State of Uttar Pradesh v. Dinesh Kumar Sharma** arising out of **Civil Appeal No.1080/2017** decided on **20.03.2025** in respect of belated claim of pension, it has been

observed that where the claim relates a continuing ground, which does not affect rights of third parties, equities can be balanced by restricting the arrears for entitlement which a claimant is held to be eligible for, normally up to the period of three years prior to the date of filing of the writ petition. For ready reference, Para No.19 of the judgment is being reproduced hereunder:-

> *"19. This Court in various judgments has clearly held and settled that pension is not a charity, or a bounty, and an employee is entitled to receive his pension. As a matter of principle, belated service-related claims need to be rejected on the ground of delay and laches. However, where the claim relates to a continuing wrong, which does not affect the rights of third parties, equities can be balanced by restricting the arrears for the entitlement which a claimant is held to be eligible for. Normally, the period of three years prior to the date of filing of the Writ Petition in the High Court for restricting the consequential relief has been resorted to regarding disbursal of arrears, which is justified. In the present case also, therefore, the benefit of arrears of pension can be restricted to three years prior to the date of filing of the Writ Petition."*

27. Following the dictum of the Hon'ble Supreme Court expounded in the above-referred judgments, and applying the same to the facts of the present case, we are of the considered opinion that the balance of equities can be maintained by restricting the award of arrears of disability/ invalid pension to petitioner with effect from three years prior to the date of filing of S.B. Civil Writ Petition No.13230/2009, and from that date, petitioner is entitled to receive regular invalid pension.

28. The net upshot of the discussion and enunciation made in the foregoing paragraphs is that petitioner is held eligible and entitled to receive disability/ invalid pension under Regulations 197 and 198 of the Pension Regulations for the Army, 1961, with effect from the date preceding three years from the date of filing of S.B. Civil Writ Petition No.13230/2009.

29. As a final result, the instant writ petition succeeds and stands partly allowed to the extent of declaring the entitlement of petitioner for disability/ invalid pension with effect from a date, three years prior to the date of putting forth his claim for invalid pension by way of filing S.B. Civil Writ Petition No.13230/2009 before the High Court. Consequently, to the extent of not awarding such relief and declining Prayer No.(ii) by the AFT, the impugned final order dated 16.08.2022, dismissing the original application of petitioner as a whole, is hereby quashed and set aside. Respondents are directed to pay the arrears of disability/ invalid pension due to the petitioner up to June, 2026 within a period of three months, and w.e.f. July, 2026 onwards, shall continue to pay disability/ invalid pension to the petitioner regularly.

30. It is hereby further directed that any delay in payment of the arrears, shall carry interest @ 6% per annum for the delayed period, reckoned from the date of this Order till actual payment.

31. There shall be no order as to cost(s).

32. Pending application(s), if any, stand(s) disposed of.

(RAVI CHIRANIA),J **(SUDESH BANSAL),J**

Sachin Sharma