

COURT NO. 2, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No. 524 of 2019

In the matter of :

Ex Sub Clk (SD) Dharam Das Pancheshwar ... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Shri Virender Singh Kadian, Advocate

**For Respondents : Shri Satya Ranjan Swain, Advocate for
Respondents Nos. 1 to 3**

**Ms. Anjali Vohra, Advocate for
Respondent No. 4**

CORAM :

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER(J)

HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has filed this OA and the reliefs claimed in Para 8 read as under :

***“(i) Direct respondents to grant AGIF benefits
as per the assessment of his disability
and make payment of due arrears as
applicable with interest @ 12% per
annum till final payment is made. And/or***

(ii) Pass any other order as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case mentioned above.

BRIEF FACTS

2. The applicant was enrolled in the Indian Army on 13.03.1989 in the Rajputana Rifles and was discharged from service on 30.11.2017 being in low medical category during the extension period of service for the disability 'BILATERAL SENSORINEURAL HEARING LOSS (BSHL)' which was held as aggravated by military service. Before the extension period of service, on 31.01.2009, the applicant was also placed in low medical category P3(T-24) for the disability 'PIVD L3-4, L4-5 & L5-S1' and subsequently on 17.06.2010, the medical category of the applicant was downgraded to P2 (Permanent) for the said disability and he remained in the same medical category till he was discharged from the first spell of service.

3. Thereafter, the applicant was granted extension of service with effect from 13.03.2017 to 11.04.2018 in the low medical category. However, during the extension period of

service, the applicant was diagnosed with BILATERAL SENSORINEURAL HEARING LOSS (BSHL) and was placed in low medical category H2 (Temporary) from 13.04.2017 to 24.09.2017. Therefore, in view of the IHQ of MoD (Army) letter No. B/33098/AG/PS-2(C) dated 20.09.2010, a discharge order of the applicant was issued by Records, RAJ RIF vide letter No. RAC/4/2/Gen/DO dated 01.06.2017. The Release Medical Board (RMB) held on 16.08.2017 assessed the disabilities of the applicant i.e. PIVD L3-4, L4-5 & L5-S1 @ 20% for life and BILATERAL SENSORINEURAL HEARING LOSS @ 20% for life, compositely assessed @ 40% for life and both the disabilities were conceded as 'aggravated by military service'. Accordingly, the applicant was granted the disability element of pension in respect of both the disabilities i.e. PIVD and BSHL @ 40% (assessed compositely) with rounding off benefit @ 50% vide PPO No. 16220170092 dated 21.11.2017. The Respondent No. 3, i.e. Records RAJ RIF, vide letter No. PDC/Dis/3/11JC-470891 dated 22.01.2018 submitted the claim for the grant of the disability benefit to the AGI which was rejected by the Army Group Insurance (AGI) vide their letter No. A/56327/RAJRIF/AG/

Ins/Dis/88943/NE dated 21.02.2018 with remarks *"the disability benefit claim in respect of the above named individual has been examined. He is not eligible for disability benefit due to the individual was admitted to hospital in low medical category on the crucial date of commencement of extension of service."* However, the applicant sent a legal notice-cum-representation dated 17.06.2018 for the grant of AGIF benefits. Aggrieved by getting no response from the respondents, the applicant filed the present OA. In the interest of justice, in terms of Section 21(1) of the AFT Act, 2007, we take up the same for consideration.

CONTENTIONS OF THE PARTIES

4. The learned counsel for the applicant submitted that the applicant, at the time of joining the service, was declared fully fit medically and physically and no note has been made in the service documents of the applicant regarding any disease suffered by him at that time. The learned counsel submitted that as per the AGIF policy, a person is eligible for grant of AGIF benefits under the disability scheme if he is discharged/invalided out of service on medical grounds and his service is cut short due to that medical disability, with no

extension of service granted. The learned counsel for the applicant further submitted that the applicant was a member of the AGIF and used to pay monthly subscription for group insurance scheme and thus he is entitled to the benefit of the AGIF scheme and due to the fact that the disabilities of the applicant were accepted as 'aggravated by military service' due to which his service was cut short, for which he is in receipt of the disability pension and the respondents have committed a grave error in not granting the AGIF benefit to the applicant. In order to buttress his submissions, the learned counsel placed reliance on the judgments of the Hon'ble High Court of Delhi in **Baljor Singh Vs. Union of India and Others [65 (1997) DLT 872]** and **Ex Cpl Ashok Kumar Vs. A.F.G.I.S. & Ors. [WP (C) No. 3119 of 2017]** decided on 13.12.2010, wherein the disability suffered by the petitioners therein were held to be attributable to the service and thus the AGIF benefits were granted to them. Hence, the learned counsel for the applicant prayed the OA may be allowed.

5. Respondent No. 4, Army Group Insurance Fund (AGIF), has filed the detailed counter affidavit on 10.10.2019.

The learned counsel for the AGIF submitted that the AGIF is a Society registered under the Societies Registration Act XXI of 1860 with the Registrar of Societies on 06.12.1976 and it carries on the activities for the benefit of the Army personnel and their dependents through its insurance scheme on 'no profit and no loss' basis and that it is governed by its own rules and regulations and bye-laws framed by the Society which are approved by the Board of Governors (BOG). The learned counsel narrated the background facts regarding establishment of the AGIF; that it is essentially a self-run group insurance scheme and that every person enrolled in the Army becomes a member of the AGIF and pays a monthly subscription to the fund; that the disability benefit paid by the AGIF is entirely different from the disability pension paid by the Govt. and that the disability benefit schemes were approved by the BOG of the AGIF to compensate those members who were invalidated out of service on medical grounds and whose service was cut short on or after 01.01.1980 in the medical category 'EEE' with 40% disability or more due to attributable or non-attributable causes, subject to meeting the specified eligibility parameters. The

learned counsel submitted that the Disability Benefit Scheme has been amended from time to time by the BOG of the AGIF in its various meetings; and that the BOG in its 18th meeting held on 17.09.1990 decided to review the disability benefits scheme every year including the amendment regarding excluding the personnel who are in receipt of any kind of pension.

6. The learned counsel submitted that the applicant was enrolled on 13.03.1989; during his service, the applicant was placed in temporary low medical category S1H1A1P2(T-24)E1 due to disability 'PIVD L3-4, L4-5 & L5S1' on 31.01.2009; thereafter on review, the applicant was downgraded to permanent low medical category S1H1A1P2(Permanent)E1 for the said disability on 17.06.2010 and the applicant remained in the same low medical category till his discharge from service. The learned counsel further submitted that the applicant was granted extension of service from 13.03.2017 to 11.04.2018 with the low medical category S1H1A1P2(Permanent)E1 for PIVD; that during extension period of service, the applicant was again downgraded to the low medical category S1H3(T-24)A1P1E1 from 13.04.2017 to

24.09.2017 due to another disability 'Bilateral Sensorineural Hearing Loss (BSHL)' and later the applicant was downgraded to permanent low medical category for the said disability P3(Permanent) due to which he was discharged from that service on 30.11.2017. The learned counsel for R-4/AGIF referring to Para 59(d) of the Army Order 23/2002/AGI and AGIF letter dated 17.10.1991 contended that those personnel granted extension, who were in LMC (Temporary) or Permanent or were in hospital on the crucial date of commencement of extension and subsequently released in LMC permanent or invalided out in category EEE during the currency of the extended tenure are not eligible for disability benefit from the AGIF and since the applicant was in low medical category S1H1A1P2(Permanent)E1 on the date of commencement of extension of his service, he is not entitled to grant of disability benefit under the Disability Benefit Scheme of the AGIF and also due to the fact that the applicant is in receipt of the disability element of pension, he is not entitled to get the aforesaid benefit on this count also. The learned counsel placed reliance on the judgments and orders of various courts including the order dated

19.02.2014 passed by the Larger Bench of the AFT in **Meena Devi and others Vs. Union of India & Ors. [O.A. No. 09 of 2011]** wherein it was clearly stated that the membership, subscription and benefits of AGIF shall be governed by the rules, policies and bye-laws framed therein and shall not be linked with any similar policies or benefits like disability pension, *ex-gratia*, broad-banding etc. as extended by the government. Accordingly, learned counsel for R-4/AGIF prayed for dismissal of the OA.

7. Counter affidavit has also been filed by Respondents Nos. 1 to 3/Union of India on 14.08.2020. The learned counsel for Respondents Nos. 1 to 3 reiterated the facts of the case that the applicant was enrolled in the Indian Army on 13.03.1989 and the applicant being downgraded to the temporary low medical category first and later to permanent low medical category in respect of the disability 'PIVD L3-4, L4-5 & L5-S1', was discharged from the service; thereafter the applicant was granted extension of service with effect from 13.03.2017 to 11.04.2018, however, during this service, the applicant was downgraded to temporary low medical category for the disability 'Bilateral Sensorineural Hearing

Loss'. The Release Medical Board held on 16.08.2017 assessed the disabilities of the applicant i.e. PIVD and BSHL @ 20% for life for each disability and compositely assessed the same @ 40% for life and finding the applicant in permanent low medical category i.e. S1H1A1P2(P)E1 for PIVD and S1H3(P)A1P1E1 for BSHL, he was discharged on 30.11.2017. The learned counsel further submitted that the applicant was already granted disability pension with effect from 01.12.2017 vide PPO No. 162201700092 dated 21.11.2017. Thereafter, the learned counsel reiterated the relevant provisions and the facts about the ineligibility of the applicant for granting AGIF scheme Disability Benefits as submitted on behalf of R-4/AGIF.

ANALYSIS

8. We have heard the learned counsel for the parties and have perused the record produced before us.

9. The AGIF is governed by the rules and regulations as a Society registered under the Societies Registration Act and has framed its rules and Bye-laws to carry out activities for the benefit of army personnel and their dependents through this insurance scheme. The AGIF disability scheme was

introduced to compensate those service personnel who were invalided out of service due to low medical category and whose service was cut short before completion of the terms of engagement and the personnel with the percentage of disablement being 20% or more are eligible to the said benefit. However, there are certain categories of personnel prescribed in the scheme, who are declared ineligible for getting the said benefit. In this regard, Paras 58 and 59 of Part IV of the AGIF Scheme contained in the Army Order 23/2002/AGI with regard to the Disability Benefits are referred to, which read as under :

"PART IV – DISABILITY BENEFITS"

"Para 58. AGIF Disability Scheme was introduced on 01 Jan 80 to compensate those personnel whose service was cut short and were invalided out of service in Medical category EEE with 40 per cent and above disability. The progressive improvement of percentage of disability criteria was introduced for disability benefit as under :-

<u>Disability Percentage</u>	<u>Medical Category</u>	<u>Eligible date for those Discharged/Invalided Out before Completing Contractual Service on Or after</u>
(a) 40% and above	BEE, CEE or EEE	27 Sep 1987
(b) 30% and above	- do -	01 Oct 1990
(c) 20% and above	- do -	01 May 1992

Para 59 The objective of AGIF Disability Scheme is to provide financial benefit to individual, whose service is

cut short due to invalidment or release on medical grounds before completion of the terms of engagement or service applicable to the rank. The disability benefit is paid as a lump sum benefit based on initial assessment by Invalidment Medical Board or Release Medical Board before completing the contractual period of service of the rank and meeting the eligibility conditions. The disability benefit admissible is 50 per cent or as specified of the prevalent insurance cover for 100 percent disability on the date of invalidment and proportionately reduced for lower percentage of disability upto 20 percent or as specified. However, the following categories of personnel are NOT eligible for disability cover :-

(a) Personnel, whose disability is detected and are awarded disability pension element at the time of proceeding on normal pension/discharge/release on completion of terms of engagement or service limits for the rank/age of superannuation.

(b) P&T deputationists invalided out of military service but continue in service in their parent department on reversion from Army.

(c) Personnel proceeding on pension/discharge/ release at their own request or after expressing unwillingness to serve in sheltered appointment being in permanent EEE, CEE or BEE medical category or due to any other reason.

(d) Personnel granted extension, who were LMC (Temporary) or permanent or were in hospital on the crucial date of commencement of extension and subsequently released in LMC permanent or invalided out in category EEE during the currency of the extended tenure.

(e) The career of an individual should be cut short, which implies that anyone who serves upto the laid down age of retirement or service limit for the rank even though with disability (20% and above) is not eligible.

(f) Personnel invalided out of service due to disease of pre-enrolment origin.

(g) Discharged on disciplinary grounds/undesirable.

(h) Personnel discharged in Low Medical Category due to Alcohol/Drug Dependence Syndrome."

10. On perusal of the aforesaid provision envisaged in Para 59(d), it is clear that the personnel granted extension, who were LMC (Temporary) or permanent or were in hospital on the crucial date of commencement of extension and subsequently released in LMC permanent or invalided out in category EEE during the currency of the extended tenure, are not eligible for disability cover under the AGIF scheme. In the present case, it is evident from the record that the applicant was placed in low medical category S1H1A1P2(Permanent)E1 for the disability PIVD on 17.06.2010 and he remained in the same low medical category till his discharge from his initial regular service. Therefore, it is established and undisputed that on the date of commencement of extension of his service, the applicant

was already in the low medical category. Accordingly, in view of the provisions of Para 59(d) as reproduced hereinabove, the applicant cannot be held entitled to the disability benefit/cover under the AGIF Scheme as the applicant clearly falls in the category (d) of Para 59 which provides that the personnel granted extension, who were LMC (Temporary) or permanent or were in hospital on the crucial date of commencement of extension and subsequently released in LMC permanent or invalided out in category EEE during the currency of the extended tenure, are **not eligible** for disability cover under the AGIF scheme. Thus, the applicant is not eligible for the grant of benefit of the disability cover under the AGIF scheme as prayed for.

11. It is essential to observe that the reliance placed on behalf of the applicant on the verdicts of the Hon'ble High Court of Delhi in *Baljor Singh (supra)* and *Ex Cpl Ashok Kumar (supra)* is wholly misconceived, as the facts thereof are not in *pari materia* to the facts of the instant case. This is so in as much as in the instant case, the applicant was already in low medical category from 31.01.2009 before the extension of his service from 13.03.2017 to 11.04.2018 and

who, in the instant case, in terms of Para 59(d) of the Army Order 23/2002/AGI is ineligible to the grant of the AGIF cover. In the cases of *Ex Cpl Ashok Kumar (supra)* and *Baljor Singh (supra)*, the applicants could not avail of sheltered appointment due to their low medical condition. In the instant case, the applicant was re-employed in a low medical category and further in terms of Para 59(d) of the Army Order 23/2002/AGI is not eligible to the grant of the AGIF benefits. Furthermore, it cannot be overlooked that vide order dated 29.09.1997 in ***UOI Vs. Baljor Singh [Civil Appeal No. 6912 of 1997]***, the Hon'ble Supreme Court has observed categorically that the judgment in *Baljor Singh (supra)* is confined to the facts of that case.

CONCLUSION

12. In view of the aforesaid discussion and parameters referred to above, we hold that the applicant is not entitled to the disability benefits under the AGIF Scheme as per Para 59(d) of the AGIF scheme contained in the Army Order 23/2022/AGI. The O.A. No. 524 of 2019 is, therefore, dismissed being devoid of merit.

13. There is no order as to costs.

Pronounced in the open Court on this 21st day of
December, 2023.

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

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