

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

OA No. 611/2018

Ex Nk Mayank Chaudhary (Retd.) **Applicant**

Versus

Union of India & Ors. **Respondents**

For Applicant : Mr. Virender Singh Kadian
Advocate

For Respondents : Mr. Anil Gautam, Advocate
For Respondents 1 – 3

Ms. Anjali Vohra, Advocate
For Respondent 4

CORAM:

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

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

ORDER

1. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 (hereinafter referred to as 'AFT Act'), the applicant has filed this OA and the reliefs claimed in Para 8 are read as under: -

***“(i) Quash and set aside the impugned letter No.
A/56327/MIR/AG/Ins/Dis/Legal Notice dated
05.09.2017. And/or***

(ii) Direct the respondents to grant AGIF benefits and make payment of due arrears as applicable with interest @ 12% per annum till final payment is made.

(iii) 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 11.10.2001 and was discharged from service on 30.04.2017 (A/N) under item III (iii) (a) (i) annexed to Rule 13 (3) of Army Rules, 1954.

3. The onset of the disability, **Spondylolisthesis LV5 OVER SV1 M-43.16**, of the applicant was in the year 2012 when the applicant was posted in the Delhi area, and after the onset the applicant was downgraded to Low Medical Category (LMC) i.e., P3 (T-24) for the disability **Spondylolisthesis LV5 OVER SV1 M-43.16**, w.e.f. 10.07.2013 as per the Medical Board held on 10.07.2013 at Base Hospital, Delhi Cantt.

4. Since the applicant was downgraded to LMC P3 (T24), the respondents had issued a Show Cause Notice (SCN) dated

11.08.2016 proposing the discharge of the applicant from the service due to LMC of the applicant. The applicant vide letter dated 20.08.2016 replied to the SCN issued by the respondents and expressed his desire to continue in the service till August, 2017.

5. The Release Medical Board (RMB) at the time of release vide AFMSF-16, dated 30.12.2016 assessed the disability **Spondylolisthesis LV5 OVER SV1 M-43.16** of the applicant at @ 20% for life and recommended as 'Aggravated', in terms of Para 51, Chapter VI of the Guide to Medical Officers (Military & Pensions), 2008, by the military service due to physical stress and strain of the service. The net assessment qualifying for disability pension was also assessed at @ 20% for life, however, the applicant was not granted the disability element of disability pension.

6. The applicant had filed a Legal notice cum representation dated 13.08.2017 seeking the grant of disability element of disability pension and the disability benefit paid by the Army Group Insurance Fund (AGIF) under its disability benefit scheme

and consequently the applicant was granted disability element of disability pension at the rate of Rs. 2279/- per month w.e.f. 01.05.2017 for life, issued by the PCDA (P) Allahabad vide Corrigendum PPO No. D/CORR/12467/2017 dated 17.08.2017.

7. The applicant was denied the benefit of grant of disability benefit under the AGIF scheme as the applicant was not willing to undergo the treatment surgery as recommended by the respondents. The 'Unwillingness Certificate for Treatment (Surgical) as per Appendix 'A' to Chapter - V is annexed as Annexure R-4/8 to the Counter Affidavit filed on behalf of the Respondent - 4 i.e., Army Group Insurance Fund (AGIF) on 18.05.2018.

8. Aggrieved by the decision of the respondents, the applicant has filed the instant OA. In the interest of justice, in accordance with Section 21(1) of the AFT Act, we take up the present OA for consideration.

CONTENTIONS OF THE PARTIES

9. The learned counsel for the applicant submitted that the applicant was enrolled in the Indian Army on 11.10.2001 in a

'Fit' medical condition and was discharged from military service on 30.04.2017 in LMC P3 (P) owing to the disability **Spondylolisthesis LV5 OVER SV1 M-43.16** which the applicant suffered during the service in the year 2012 and was also conceded as 'Aggravated' at @ 20% for life by the RMB held on 30.12.2016.

10. The learned counsel for the applicant contended that the applicant was deemed to be invalided out of military service on medical grounds as the service of the applicant was cut short due to the disability suffered by the applicant during the military service and the applicant was denied extension of service till August 2017 because of his LMC.

11. The learned counsel for the applicant further contended that the applicant is also entitled for the grant of disability benefit under the AGIF scheme, however, since the applicant was not willing to undergo the treatment surgery as recommended, the respondents (AGIF) have wrongly and arbitrarily reduced the percentage of the assessment of the applicant's disability to 10% and did not grant the disability benefit under the AGIF Scheme

vide impugned letter No. A/56327/MIR/AG/Ins/Dis/Legal Notice dated 05.09.2017, with no extension of service granted.

12. 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 disability benefit of the AGIF scheme and due to the fact that the disability 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 (AGIF) have committed a grave error in not granting the AGIF benefit to the applicant.

13. The learned counsel for the applicant placed reliance on the Judgments of the Hon'ble High Court of Delhi in ***Ex Subedar Baljor Singh v. Union of India*** and ***Ex Cpl Ashok Kumar v. AFGIS & Ors.*** decided on 01.01.1997 and 13.12.2010 respectively, 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.

14. *Per Contra*, the Respondent No. 4 i.e., Army Group Insurance Fund (AGIF) filed a detailed Counter Affidavit on 18.05.2018 and 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 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).

15. The learned counsel for Respondent No. 4 further submitted that the AGIF 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.

16. The learned counsel for R-4 further submitted that the 'disability benefits' under the AGIF was initially introduced for the first time w.e.f. 01.01.1980 vide Army Order 27/1981 (now Army Order 23/2002/AGI) and the disability benefits were

approved by the BOG of the AGIF to compensate those members who were invalidated out of service due to attributable or non-attributable causes with a disability of 40% in medical category 'EEE', 'CEE', or 'BEE' w.e.f. 27.09.1987 – 30.09.1991 and later revised to minimum assessment of 30% w.e.f. 01.10.1990 and then reduced to 20% w.e.f. 01.05.1992, subject to meeting the specified eligibility parameters.

17. The learned counsel for R-4 submitted that the applicant was asked/offered to undergo a surgery as advised by the Classified Specialist Surgery and Neurosurgeon, however, the applicant had denied and was unwilling to undergo the surgery offered to him by the respondents and further submitted that had the applicant underwent the surgery as offered, the percentage of the disability suffered by the applicant could have been reduced to 10%, which would be less than the eligibility criteria for the award of disability benefits i.e., 20%, and hence the claim of the applicant for the grant of disability benefits under the AGIF would have become unsustainable and hence the claim of the applicant was correctly denied by Respondent – 4.

18. Counter Affidavit has also been filed by the learned counsel for the Respondents No. 1 to 3 / Union of India on 19.11.2018. The learned counsel for R – 1 to 3 while reiterating the factual matrix of the instant case submitted that the claim of the applicant for the grant of disability benefits under the AGIF is not correct in terms of Para 58 of the AO 23/2002/AGI as the percentage of the disability of the applicant, being 10% after refusal to undergo surgery, is not meeting the minimum criteria for the grant of the benefit, i.e., 20%, and hence prayed for the dismissal of the instant Original Application filed by the applicant.

ANALYSIS

19. We have heard the learned counsel of the parties at length and have perused the records produced before us.

20. Though, 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 for the said benefit. The relevant Para(s) of the Army Order 23/2002/AGI governing the disability benefit claim under the AGIF have been reproduced hereinbelow, which states to the effect: -

“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: -

Disability Percentage	Medical Category	Eligible date for those Discharged/Invalided out before completing Contractual Service on or after
(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 Army Group Insurance Fund 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 lumpsum 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 percent or as specified for the prevalent insurance cover for 100 percent disability on the date of invalidment and proportionately reduced for lower percentage of disability up to 20 percent or as specified from time to time. 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 proceeding on normal pension/discharge/release 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 invalidated 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.”*

21. Vide Order dated 19.02.2014 of the Larger Bench of the AFT (RB) Chandigarh at Chandimandir in ***Meena Devi v. UOI & Ors.*** in OA 09/2011 and 04 other matters, it has been laid down that matters related to the AGIF in respect of beneficiaries are within the the jurisdiction of the Armed Forces Tribunal Act, 2007 and can be adjudicated by the Tribunal. Furthermore, Civil Appeal No. 13579/2015 against the same in ***Army Group Insurance Fund v. Meena Devi and Ors.*** has been withdrawn by the AGIF on 07.08.2025 which is not refuted.

22. It is not in dispute that the applicant had suffered the disability “***Spondylolisthesis LV5 OVER SV1 M-43.16***” during the service in the year 2012 and the same has been assessed as ‘Aggravated’ at @ 20% for life. The Respondent No. 4 while

denying the claim of the applicant for the grant of disability benefit under the AGIF, vide the impugned letter dated 05.09.2017 annexed as Annexure A-1 to the OA, relied on Para 58 of the AO 23/2002/AGI (supra). The respondents have argued that the applicant had refused to undergo the surgery and due to his refusal to undergo such surgery, the overall assessment of the percentage of the disability of the applicant could not be improved and it remained 20%, which otherwise could have been reduced to 10%, and in view of the same the applicant was not granted the benefit sought after by him.

23. Since the argument of the respondents in not granting the disability benefit to the applicant under the AGIF is restricted only to the extent of the percentage of the disability suffered by the applicant being less than 20%, i.e., 10% had he undergone the surgery, it is essential to advert to communication letter of the DGAFMS, Ministry of Defense bearing No. 16036/RMB/IMB/DGAFMS/MA (Pension) dated 16.04.2019, which clarified the assessment for the cases of spinal disorder stating that *“Refusal to undergo surgery for spinal disorders e.g. PIVD stands to reason and hence should not become a reason to*

reduce percentage of the disability." The said letter is reproduced hereinbelow for reference: -

संख्या: 23093442

Read/SDS

श्रीजीएफएमएस का कार्यालय
रक्षा भवन
एम ब्लॉक, पिन- 908713
मार्फत 58 ए पी ओ

16036/आरएमएस/आईएमसी/श्रीजीएफएमएस/एम ए (परान)

16 अप्रैल 2019

कार्यालय श्रीजीएमएस (आसी) / डीजी - 5 ए

कार्यालय श्रीजीएमएस (नेवी) / कमांडर (एमएस) - एए

कार्यालय श्रीजीएमएस (एयर) / डीएसएस (एम बी)

**CLARIFICATION ON ASSESSMENT
FOR CASES OF SPINAL DISORDERS**

1. It has been observed that many RMBs are reducing percentage of disability for Spinal Disorders e.g. PVD in cases where individuals have refused to undergo surgery.
2. In this context, Para 3, Chapter V, GMO 2002 clarifies that if the refusal to undergo an operation is reasonable, full disability pension normally admissible may be granted. Refusal to undergo an operation may be held reasonable when, in the opinion of medical authorities, it is improbable that such operation would cure the disability or reduce its percentage, or if such operation may be severe and dangerous to life. Surgeries performed for Spinal Disorders e.g. PVD have the probability to cure the disability. However, there are underlying complications. Recurrence of symptoms subsequently to initial relief is also a probability, because of early onset of osteoarthritis. Therefore, the refusal of an individual to undergo surgery for Spinal Disorders e.g. PVD stands its reason and hence should not become a reason to reduce percentage disability.
3. All units under your Chain of Command may be advised accordingly.

व्यक्तिगत मूल्यांकन

(कविता सहाय)

शिगेडियर

शिगेडियर रा. सेना, वि. सेवा (परान)

24. In the present case, the respondents have already assessed the disability of the applicant at 20% and the arbitrary reduction of assessment of the percentage of the disablement of the applicant to 10%, as he had not undergone the surgery, holds no good ground as there is a failure on part of the respondents and medical authority to supply any cogent reason for the said reduction of the percentage. Mere refusal to undergo surgery cannot be accepted as *reasonable justification* for reducing the percentage of the disability in the absence of any reason about the assessment of improvement in the medical condition of the applicant after the treatment.

25. It is also apposite to bring it on record that even if the applicant had undergone the surgery, the disability of the applicant would not have ceased to exist. The competent medical authority, i.e., the Directorate General of the Armed Forces Medical Services (DGAFMS) have already acknowledged in the letter dated 16.04.2019 (*supra*) that there are underlying complications of undergoing such surgeries which could also result in worsening of the medical condition of the applicant post-surgery and hence the reasoning as submitted by the

respondents in their respective counter affidavits for denying the relief as sought by the applicant cannot be sustained as the same is not reasonable and fair.

26. It is also essential to observe that this Tribunal, vide orders dated 20.09.2023 and 06.09.2023 in **OA 1595/2017** titled **Ex Sgt. Praveen Senwal v. UOI & Ors.** and **OA 1136/2019** titled **Ex MC EA (P) I Kuldeep Kumar Verma,** respectively, allowed the claim of both the applicants for the grant of disability element of disability pension while placing reliance on the DGAFMS letter dated 16.04.2019 (*supra*), wherein the respondents initially rejected the claim of the applicants by arbitrarily reducing the percentage of assessment of the disability on the ground of refusal to undergo the surgery as offered by the respondents.

CONCLUSION

27. In view of the above analysis, the impugned letter dated 05.09.2017 issued by the AGIF, Adjutant General's branch annexed as Annexure A-1 to the OA, is hereby quashed and set aside.

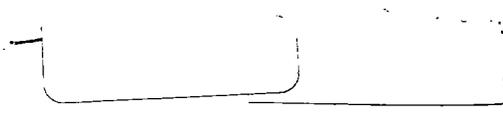
28. The applicant is held entitled for the grant of the disability benefits under the AGIF and the respondents are hereby directed to release the said benefit in favour of the applicant within three (03) months from the date of receipt of copy of this Order, failing which, the applicant shall be entitled to interest at @ 8% per annum after the expiry of the period of the three months till the date of actual payment.

29. The OA 611/2018 is thus allowed accordingly. No order as to costs.

30. Pending Miscellaneous Application(s) if any stands disposed of accordingly.

Pronounced in the open Court on this 16 day of March, 2026.


[REAR ADMIRAL DHIREN VIG]
MEMBER (A)


[JUSTICE ANU MALHOTRA]
MEMBER (J)

/staff/