

**COURT NO.1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

OA 761/2023 WITH MA 1129/2023

Ex L/Nk Prabir Kumar Mall **Applicant**
Versus
Union of India and Ors. **Respondents**

For Applicant : Mr. Ajit Kakkar, Advocate
For Respondents : Mr. Niranjana Das, Advocate

CORAM

**HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)**

ORDER

M.A. No. 1129/2023

This is an application filed under Section 22 of The Armed Forces Tribunal Act, 2007 seeking condonation of delay of **130** days in filing the present OA which is allowed for the reasons stated in the application despite opposition on behalf of the respondents. The MA is disposed off accordingly.

OA 761/2023

2. This application has been filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, seeking following reliefs:

- "(a) To direct the respondent to bring all service and medical documents including the relevant medical documents on record with advance copy to the applicant.***
- (b) To set aside/quash the Rejection Letter/ Impugned Letter dated 06.12.2021.***
- (c) To grant disability pension to the Applicants from the date of Discharge (01.01.2022) w.e.f. 02.01.2022.***
- (d) To direct the Respondents to brand broad banding of the disability pension w.e.f. 02.01.2022.***
- (e) To direct the Respondents to issue a corrigendum PPO pertaining to the disability pension and broad banding of the disability pension of the Applicant***
- (f) To direct the Respondents to pay arrears of disability pension and broad banded disability pension along with interest @ 12% w.e.f. 02.01.2022.***
- (g) To grant such relief appropriate to the facts and circumstances of the case as deemed fit and proper.***

FACTS

3. The applicant was enrolled in the Army on 23.12.2004 and was discharged from service on 31.12.2021 under Army Rule 13(3), Item III(i), i.e., "on fulfilling the conditions of enrolment or service or on reaching the age limit," after rendering 17 years and 09 days of qualifying service, while being in a low medical category. At the time of his discharge, he was placed before the Release Medical Board (RMB), which assessed the disability "PIVD L5-S1" at 20% for life and opined the same to be aggravated by military service. However, the disability was reduced to 15% for life on account of the applicant having expressed unwillingness to

undergo the advised surgical procedure, which, as per medical opinion, could have improved his condition.

4. The claim of the applicant for grant of disability pension was rejected vide letter No. P/15696393A/REJECTION/DP-1/NER dated 06.12.2021, on the ground that he was not entitled to disability pension in terms of Regulation 53 of the Pension Regulations for the Army, 2006.

5. Thereafter, the applicant preferred a first appeal-cum-legal notice dated 10.05.2022 seeking grant of disability pension. The same was responded to vide communication dated 02.02.2022, wherein it was intimated that the appeal was time-barred, and the applicant was advised to submit a delay explanation certificate.

6. Subsequently, the applicant preferred his First Appeal dated 13.07.2022; however, the same was submitted without the requisite delay explanation certificate, which fact was duly communicated to him. Upon receipt of the delay explanation certificate, the appeal was processed and forwarded to the Competent Authority on 01.09.2022, where it is presently stated to be pending consideration.

SUBMISSIONS ON BEHALF OF THE APPLICANT

7. Learned Counsel for the applicant contends that no note or record of any disability finds mention in the service documents at the time of the applicant's enrolment, thereby establishing that he was medically fit and free from any pre-existing spinal ailment upon entry into service. It is submitted that the disability, namely PIVD L5-S1, manifested during the course of service as a consequence of the strenuous, stressful, and physically demanding conditions under which the applicant was required to perform his duties.

8. It is further urged by the learned counsel that the nature of his service entailed prolonged hours of standing, repeated overtime duties, performance of physically intensive tasks, and engagement in hard manual labour (Shramdaan), all of which subjected the lumbar spine to sustained mechanical and occupational stress. According to the applicant, such continuous strain led to progressive deterioration of his spinal condition, ultimately culminating in the diagnosis of Prolapsed Intervertebral Disc at L5-S1. It is, therefore, contended that since the disability manifested during active service, in the absence of any prior medical history, a direct and proximate nexus exists between the rigours of

military service and the onset of the said disability, thereby establishing that the condition is attributable to, or at least aggravated by, military service.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

9. Per contra, learned counsel appearing for the respondents submits that the Release Medical Board assessed the applicant's disability as "aggravated to service" and not "aggravated by service," and quantified the same at 15% for life. It is contended that since the disability element qualifying for pension was assessed as 'NIL', the applicant does not meet the eligibility criteria for grant of disability pension.

10. It is further submitted by the learned counsel that the applicant had expressed unwillingness to undergo the advised medical treatment/surgical intervention for the said disability, and that, in the opinion of the medical authorities, the percentage of disability could have been reduced had he consented to and undergone the recommended procedure.

CONSIDERATION AND ANALYSIS

11. Upon consideration of the submissions advanced on behalf of the respective parties, the sole question that arises for

determination before this Tribunal is whether the refusal or unwillingness of an individual to undergo a recommended surgical procedure for a disability can constitute a valid and reasonable ground to deny the claim for disability pension, particularly when the said disability has been opined by a duly constituted Medical Board to be aggravated by military service.

12. In the present case, it is pertinent to note that in Part V, Page 8, Paragraphs 2(c), (e), (f), (g) and Paragraph 3 of AFMSF-16, annexed at Page 30 of the applicant's submissions and at Page 69 of the Counter Affidavit filed by the respondents, it has been specifically recorded to the following effect:

<p>"2. (c) Has the individual refused to under operation/ treatment? If so, individual's reason will be recorded. YES, UNWILLING CERT COPY ATT Note : In case of refusal of operation/treatment a certificate from the individual will be attached.</p>
<p>(e) Does the Medical Board consider if probable that the operation/treatment would have cured the disability or reduced its percentage? NA</p>
<p>(f) If the reply to (e) is an affirmative, what is the probable percentage to which the disablement could be reduced by the operation/treatment ? YES, (05% REDUCED)</p>

(g) Does the Medical Board consider individual's refusal to submit to operation/treatment reasonable? Give reasons in support of the opinion specifying the operation/treatment recommended.

YES, THE RESULT OF SURGERY ARE HIGHLY VARIABLE

3. What is present degree of disease/disablement as compared with a healthy person of the same age and sex? (Percentage will be expressed as Nil or as follows) 5%, 10%, 15% and thereafter in multiples of ten from 20% to 100%. (Composite Percentage should be rounded off to the nearest multiple of 10)

Disability / Disease (As numbered in Para 1 part IV)	Percentage of Disablement	Corresponding para of GMO 2008	Composite assessment for all disabilities (Max 100% with duration)	Disease/Disability Qualifying for pension with duration	Net Assessment Qualifying for Disability Pension (Max 100%) with duration
PIV D L5-S1 (M5 1.0)	20%	REF PARA 33 CH VII OF GMO 2008	20% (05% REDUCED DUE TO UNWILLING FOR SURGERY)	15% FOR LIFE	15% FOR LIFE

13. The refusal of the applicant to undergo the advised medical/surgical treatment is liable to be regarded as reasonable, particularly in view of the fact that the proceedings of the Release Medical Board itself record that refusal to undergo surgery for the

said disability is to be considered reasonable. In such circumstances, denial of disability pension solely on the ground that the applicant expressed unwillingness to undergo surgical intervention, despite the disability having been duly held attributable to and/or aggravated by military service, is manifestly unsustainable and legally untenable.

14. In this regard, it is apposite to refer to the communication issued by the DGAFMS, IHQ of MoD, bearing Letter No. 16036/RMB/IMB/DGAFMS/MA (Pension), which, inter alia, provides as under:

"It has been observed that many RMBs are reducing percentage of disability for Spinal Disorders e.g. PIVD in cases where individuals have refused to undergo surgery.

1. 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. PIVD 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. PIVD stands to reason and hence should not become a reason to reduce percentage disability."

15. Moreover, the coordinate bench of this Tribunal, in **OA 1136/2019 in Ex MC EA (P) I Kuldeep Kumar Verma vs UOI & Ors** vide order dated 06.09.2023 has held that:-

17. On a consideration of the available record and submissions made on behalf of either side, the factum that the disability of that the applicant suffered from 'PIVD L3-L4, L5-S1, ICD No. M 51.8" was aggravated by military service is conceded by the respondents through the counter affidavit dated 11.11.2019 as well as by the Release Medical Board proceedings dated 31.05.2018. That the said disability cannot be assessed at less than 20% is brought forth through Para 33 of Chapter-VII of the GMO (Military Pension) 2008 which is already adverted to hereinabove in para 12.

18. Further, it is also essential to observe that in terms of the communication dated 16.04.2019 by MoD Military Pensions itself, it is indicated that refusal of an individual to undergo surgery for Spinal Disorders e.g. PIVD stands to reason and should not become a reason to reduce the percentage of disability. In the circumstances of the instant case, thus the disability of the applicant is held in terms of para 33 of the GMO (Military Pension) 2008 of Chapter VII to have a disablement percentage of 20% for life and in as much as the said disability was admittedly aggravated by military service, the applicant is held entitled to the grant to the disability element of pension in relation thereto.

16. A similar view has been adopted by this Tribunal in **Ex. LME Pramod Kumar Yadav v. Union of India & Ors. (O.A. No. 205 of 2019)** as well as in **Ex. Sgt Praveen Senwal v. Union of India & Ors. (O.A. No. 1595 of 2017)**, wherein it has been held that refusal to undergo surgical intervention, when found to be

reasonable, cannot be made a ground to deny disability pension where the disability is otherwise attributable to or aggravated by military service.

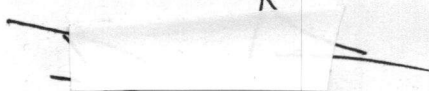
17. In light of the foregoing analysis and discussion, the Original Application deserves to be allowed. Accordingly, the respondents are directed to grant the disability element of pension to the applicant in respect of the disability "PIVD L5-S1" assessed at 20% for life and rounded off to 50%, with effect from the date of discharge, i.e., 01.01.2022, in terms of the law laid down by the Hon'ble Supreme Court in ***Union of India & Ors. v. Sgt. Girish Kumar & Ors. (Civil Appeal Nos. 6820-6824 of 2018)***.

18. The respondents are further directed to compute and sanction the disability element of pension and to issue the requisite Pension Payment Order (PPO) to the applicant within a period of three months from the date of receipt of a certified copy of this order. In the event of default, the applicant shall be entitled to interest at the rate of 6% per annum on the arrears, calculated from the date of

receipt of a copy of this order by the respondents, until actual payment.

19. With the aforesaid directions, the present OA 761/2023 is disposed of.

Pronounced in the open Court on this day of 2^{ed} March, 2026.


[JUSTICE RAJENDRA MENON]
CHAIRPERSON


[LT GEN C.P. MOHANTY]
MEMBER (A)

Akc