

MINISTRY OF DEFENCE

REPORT



सत्यमेव जयते

RAKSHA MANTRI'S COMMITTEE OF EXPERTS

REVIEW OF SERVICE AND PENSION MATTERS INCLUDING
POTENTIAL DISPUTES, MINIMIZING LITIGATION AND
STRENGTHENING INSTITUTIONAL MECHANISMS RELATED
TO REDRESSAL OF GRIEVANCES

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**CHAPTER
I
INTRODUCTION**

1. INTRODUCTION

The last few years have seen litigation initiated by the Ministry of Defence (MoD) soar to unprecedented levels. Besides causing heartburn amongst employees, former employees and their families, such heavy influx of litigation has clogged the resources of the Government leading to a shift of focus from core areas of responsibility to handling of proceedings in various Courts and Tribunals all over the country. There can be no cavil with the fact that the Government has been saddled with the tag of being a 'compulsive litigant' and that it needs to shed this image and tread on the road of being a 'responsible litigant'. The litigation being dealt with by the MoD currently is unparalleled, and majority of it is still continuing despite the fact that most issues have already been settled by Constitutional Courts, that is, High Courts and the Supreme Court. As per the estimates provided to us, a total of 16138 (Army 14411, Navy 437, Air Force 1241, Coast Guard 49) cases related to the uniformed services are pending before various Courts and Tribunals in the country. The cases involving civilian employees are in addition to the above. As on 01-12-2014, almost 90% of the total Civil Appeals/Special Leave Petitions filed by the MoD comprised challenges to disability benefits of disabled soldiers, clearly not an encouraging statistic. The cost incurred in litigation, that is, by litigants, by the government and the exchequer, and the wastage of man-hours and other intangible aspects such as movement of files and personnel, at times surpasses the amount that may be involved in redressing the issue itself. Concerns regarding this aspect have been raised by none less than the Hon'ble Prime Minister of India as also the Hon'ble Raksha Mantri particularly in case of the Ministry of Defence. It is therefore imperative that practical on-ground efforts be made to ensure not only the reduction of litigation, especially appeals, but also steps towards maintenance of harmony between employees and the establishment and balancing of the rights of both parties which would lead to an increase in productivity and also enable the Government to focus upon governance rather than avoidable disputes with its own human resources. In fact, even the Department of Personnel & Training (DoPT) has, over the years, issued many instructions and guidelines from time to time for effective

redressal of grievances, which, had the same been implemented in the correct light and spirit, could have smoothed the rough edges quite effectively.

It was hence indeed a historic step when the Constitution of this Committee by the Hon'ble Raksha Mantri was announced since it was the first time that a practical stride had been taken to address the problem at its grassroots and identify areas of concern and their resolution. We must place on record that there was no pressure or interference in the functioning of the Committee from any quarter and under the instructions of the Raksha Mantri we were given an absolutely free and fair hand in dealing with the issues under examination. In fact, we almost functioned like a *Blue Ribbon Commission* with proper inputs and candid insights from all concerned, including the Ministry, Services HQ, independent experts as well as employees' organisations wherever found necessary.

Our approach in dealing with the subject and the terms of reference was conciliatory as we tried to balance-out the subject without any personal baggage, biases or pre-conceived notions. Even more important than reduction of litigation is the desirability of harmony in the system and the aim of attenuation of frustration and heartburn. All Members of the Committee come from varied backgrounds and experiences- one of us has been the Adjutant General of the Indian Army, one was the Military Secretary, yet another represented the Government in litigation being the former Judge Advocate General of the Indian Army while one has represented aggrieved civil and military parties in service related litigation in the capacity of a lawyer and also worked for Government agencies in many areas. One Member, besides himself being a War disabled veteran, has worked for the benefit of disabled personnel. The detailed profiles of all Members are appended at the end of this Report. While there can be no prescription of a formula for individual-specific disputes, there is definitely scope for resolution in general areas which we have addressed in this Report.

We hope that as envisaged, this Report would receive the attention of the highest of the political executive with a **top-down approach** and not suffer the hackneyed approach

of seeking 'comments' from various authorities, which is exactly the malaise that we have attempted to broadly address.

When we sought inputs from various departments and wings, we had made it clear that the focus should be on progressive solutions to ensure a work culture of mutual trust and harmony where the interests of employees as well as the establishment could be addressed with an evenhanded approach. We wanted the spotlight to be on efforts to promote an environment of sustainable satisfaction which in turn would also boost the morale of employees. We had encouraged all concerned to be honest and truthful with us and we had also hoped and expected that while preparing submissions the exercise would be undertaken democratically, diligently and with an open mind so as to ensure realistic resolution of issues. The appendix of our letter to all concerned while seeking their submissions and depositions, which reflects this approach, is placed as **Annexure-1** to this Report. As an underlining remark before articulating this Report, we would like to emphasize that gone are the days when any establishment could hide behind the cloak of secrecy or appear rigid, status-quoist or inward-looking in its approach. Gone also are the days when the defence services could invoke the veil of confidentiality or fear psychosis in all matters in the name of 'national security', while the same is understandable in operational and strategic matters, it must not be allowed to encompass personnel, judicial, administrative, pensionary and cadre management issues. The times have changed and there would have to be an attitudinal shift towards flexibility, transparency and a progressive and proactive outlook by rationalizing the rights of individuals with those of the State.

We must emphasize before moving ahead that the aim of this detailed exercise was not to find faults but to find solutions, and if at places there is an element of critical analysis, it is simply to show a mirror as to where the approach was lacking in the past and to find progressive solutions, betterment and reform. We have consciously been brutally honest at places in our Report and softness and pliability cannot always co-exist with frankness and sincerity.

With this brief backdrop, we proceed with our report.

1.1 UNIVERSAL CAUSES OF LITIGATION:

Litigation, as is at times perceived, *per se*, is not always an indicator of a tumultuous or turbulent society. If at all it is an indicator, it is a pointer towards a society aware of its rights and the faith in the rule of law which is the hallmark of any democracy. However, litigation assumes dangerous proportions when it is undertaken compulsively, unethically or by way of administrative egotism. It is that kind of unwanted and unnecessary litigation that we are attempting to address alongwith recommendations for strengthening the system of redressal of grievances and recognizing potential areas of disputes which can be addressed at the very basic stage so as to curb such litigation. The idea is to rein in unethical and unwanted litigation, particularly appeals, and as a corollary, to support only ethical and genuine litigation. In doing so, we are faced with obstinacy, which truly speaking, would only be addressed by a strong will at the apex levels of the Ministry and which cannot be left to the devices of the various parts that make the whole. To take two recent examples, in line with the will of the Hon'ble Raksha Mantri, a letter dated 09-12-2014 was issued under the directions of the Defence Secretary (**Annexure-2**) with much noble intentions seeking inputs on judicial verdicts which had attained finality and could be applied to similarly placed employees, the response from various wings of the Ministry was however lukewarm, to the say the least. Then again, on 18-09-2015, the Learned Attorney General vide his letter (**Annexure-3**) had to remind the Department of Ex-Servicemen Welfare to withdraw its unethical appeals pertaining to issues that had attained finality and also had to underline the fact that the Supreme Court had imposed costs on the Ministry for obdurately continuing with such cases.

The efforts to reduce Government initiated litigation are not new, but the same have resulted in little benefit. While the National Litigation Policy (under further revision by the Ministry of Law & Justice) discourages appeals in service and pensionary matters, no actual change has been seen on the ground. The approach of instrumentalities of the Government in this regard has been deprecated in strong words by the Supreme Court

in the past. The Supreme Court in **Dilbagh Rai Jarry Vs Union of India (1974) 3 SCC 554**, had observed as thus:

“...it must be remembered that the State is no ordinary party trying to win a case against one of its own citizens by hook or by crook; for, the State's interest is to meet honest claims, vindicate a substantial defence and never to score a technical point or overreach a weaker party to avoid a just liability or secure an unfair advantage, simply because legal devices provide such an opportunity. The State is a virtuous litigant and looks with unconcern on immoral forensic successes so that if on the merits the case is weak, government shows a willingness to settle the dispute regardless of prestige and other lesser motivations which move, private parties to fight in Court....”

Further, in **Gurgaon Gramin Bank Vs Khazani (2012) 8 SCC 781**, the Supreme Court had observed as follows:

“... Number of litigations in our country is on the rise, for small and trivial matters, people and sometimes Central and State Governments and their instrumentalities Banks, nationalized or private, come to courts may be due to ego clash or to save the Officers' skin. Judicial system is overburdened, naturally causes delay in adjudication of disputes. Mediation centers opened in various parts of our country have, to some extent, eased the burden of the courts but we are still in the tunnel and the light is far away. On more than one occasion, this court has reminded the Central Government, State Governments and other instrumentalities as well as to the various banking institutions to take earnest efforts to resolve the disputes at their end. At times, some give and take attitude should be adopted or both will sink...”

And more recently, the Supreme Court in **Punjab State Power Corporation Ltd Vs Atma Singh Grewal (2014) 13 SCC 666**, has rendered the following landmark ruling underlining the concept of costs to be imposed on erring officers (and not on the organization concerned), who indulge in unethical litigation, which alone could impede such actions:

“...Even when Courts have, time and again, lamented about the frivolous appeals filed by the Government authorities, it has no effect on the bureaucratic psyche. It is not that there is no realisation at the level of policy makers to curtail unwanted Government litigation and there are deliberations in this behalf from time to time. Few years ago only, the Central Government formulated National Litigation Policy, 2010 with the “vision/mission” to transform the Government into an efficient and responsible litigant. This policy formulated by the Central Government is based on the recognition that it was its primary responsibility to protect the rights of citizens, and to respect their fundamental rights and in the process it should become ‘responsible litigant’.....Alas, inspite of the Government's own policy and reprimand from this Court, on numerous occasions, there is no significant positive effect on various Government officials who continue to take decision to file frivolous and vexatious appeals. It imposes unnecessary burden on the Courts. The opposite party which has succeeded in the Court below is also made to incur avoidable expenditure. Further, it causes delay in allowing the successful litigant to reap the fruits of the judgment rendered by the Court below.....No doubt, when a case is decided in favour of a party, the Court can award cost as well in his favour. It is stressed by this Court that such cost should be in real and compensatory terms and not merely symbolic. There can be exemplary costs as well when the appeal is completely devoid of any merit. [See Rameshwari Devi and Ors. v. Nirmala Devi and Ors.; (2011) 8 SCC 249]. However, the moot question is as to whether imposition of costs alone will prove deterrent? We don't think so. We are of the firm opinion that imposition of cost on the State/ PSU's alone is not going to make much difference as the officers taking such irresponsible decisions to file appeals are not personally affected because of the reason that cost, if imposed, comes from the government's coffers. Time has, therefore, come to take next step viz. recovery of cost from such officers who take such frivolous decisions of filing appeals, even after knowing well that these are totally vexatious and uncalled for appeals. We clarify that such an order of recovery of cost from the concerned officer be passed only in those cases where appeal is found to be ex-facie frivolous and the decision to file the appeal is also found to be palpably irrational and uncalled for.....In a case like the present, where the concerned officer took the decision to file the appeal, direction of the High Court to recover the cost from him cannot be faulted with. Sense of responsibility would dawn on such officers only when they are made to pay the costs from their pockets, instead of burdening the exchequer...”

The causes and reasons for the rising graph of litigation, and especially appeals by the Government, are multifarious and are characterized by the following:

1.1.1 Default reaction is “to appeal”:

It is observed from our interaction with all instrumentalities of the Ministry, that the first reaction to any case decided in favour of an employee is to file an appeal. This is so since nobody wants to take responsibility for implementing a decision and officers are afraid of being taken to task at a later stage for any complication and are also wary of allegations of preferential treatment. An easy way to address this is to take such decisions in a well-rounded manner by consensus by way of a collegiate system by involving various stakeholders rather than by way of the one-sided file-noting system. This would ensure that the decision is democratic and fingers cannot be pointed in the future at individuals. We shall discuss this in more detail in the succeeding parts of this Report.

1.1.2 Perception that ‘Government policy’ is sacrosanct:

There is a wrong perception amongst some officers that ‘Government policy’ is so sacred that whenever a Court takes a decision against ‘policy’, it has to be appealed against. This approach is faulty since it is common knowledge that all cases in Courts and Tribunals are bound to be against ‘Government policy’ since only those employees or former employees are expected to approach judicial fora who are aggrieved by actions of the Government taken under the pretext of a policy. By this logic, every single decision by any Court or Tribunal becomes appealable. Courts and Tribunals are bound to interpret, read down and even strike down policy at times and it is for the system to ensure that decisions that have attained finality are implemented with a universal approach. On many occasions, certain officers, are still citing policies to deny benefits that have already been struck down by way of judicial orders and the striking-down/reading-down upheld up to the highest Court of the land and the policy is hence no longer even existing in the rule book.

1.1.3 Litigant is perceived as acting against the interests of the State:

There is a tendency to ostracize litigants and they are perceived as acting against the interests of the State. This tendency has to change. In every democracy, citizens as well as the State are given the right to challenge actions in case it is perceived by them that such actions are affecting the rights of such citizens/organizations. Exercising the fundamental right to judicial redress is to be appreciated and welcomed, not condemned. As soon as an issue goes into litigation, an attempt should be made to introspect if it can still be resolved *in-house* rather than leaving it for the Court to settle. Employees may have genuine grievances against the system and grievance redressal should be seen as an integral part of the establishment with an attempt to resolve such grievances. The Ministry of Defence, unfortunately, has become so infamous for filing appeals in all cases which are decided against it that even other Ministries have started frowning upon its approach. In fact, a representative of the Ministry of Law & Justice deposing before the Parliamentary Standing Committee on Defence (Fifteenth Lok Sabha, 18th Report, 2012-2013) had opined in Paragraph 4.6 that the Ministry of Defence files appeals in almost each and every matter.

1.1.4 Pressure to 'win cases' and incidence of ego-fuelled litigation:

The first and foremost duty of an officer dealing with litigation or even of a Counsel in a Court is to assist the Court in arriving at justice rather than to 'win cases' by getting personally involved with briefs. However, the pressure imposed by senior functionaries to 'win cases' by scoring technical points over poor litigants is so high that the cardinal duty in assisting in the dispensation of justice is lost sight of. As also observed by the Apex Court in *Dilbagh Rai Jarry* and *Gurgaon Gramin Bank* cases (supra), the duty of the Government is not to win cases by hook or crook or to trample down weaker parties or to score advantage over litigants. Appeals and litigation must not be fuelled by

ego or egotism as to 'how could a small employee challenge the mighty State?' but by adopting a conciliatory approach as also stressed upon by the DoPT time and again including by way of its instructions which are referred to at various places in the instant Report. Litigation should never be allowed to become a 'prestige issue' by officers. The Government is faceless & nameless and hence officers should not be getting personally involved in cases for scoring 'wins'. **Litigation is not War, and neither is it a Sport.** It was interesting to observe during the depositions before us that rather than adhering to the spirit of reducing appeals and unwieldy litigation and faster implementation of Court orders rendered in favour of employees/former employees by cutting through red-tape as propounded by the Hon'ble Raksha Mantri, the focus of some elements presenting views before this Committee remained 'filing faster appeals', which in fact runs counter to the very intentions of the current Government in this regard. There is also an incidence of perceived injustice at the end of litigants since their complaints within the system are dealt with at their back based on a one-way file noting system, a disquiet which can be effectively cured by providing a basic opportunity of hearing, a participative process which is mandated by existing Government guidelines as well as judicial pronouncements and if introduced formally would not only decrease litigation by clearing 'perceptions' of both sides to a great extent but also lead to a greater satisfaction on account of the fact that a person has been heard before taking a decision that affects him/her.

1.1.5 Lack of uniformity of implementation in cases which have attained finality:

Litigation also increases when cases settled judicially and which have attained finality either at the High Court or Supreme Court level are not implemented for similarly placed employees thereby leading to more litigation on similar issues. The compounded cost of litigation at times surpasses the final financial effect on the Government. As reminded

by the Supreme Court in **KT Veerappa & ors Vs State of Karnataka (2006) 9 SCC 406**, lack of implementation of such decisions for similarly placed individuals only results in unnecessary litigation and movement of files and papers leading to wastage of public time. Of course, similar sentiment has been expressed time and again by the Apex Court, including in **Maharaj Krishan Bhatt Vs State of J&K 2008 (9) SCC 24** and **State of Karnataka Vs N Parameshwarappa 2003 (12) SCC 192**. It has to be kept in mind that morale of employees cannot always be weighed against 'financial implications' once an issue has attained judicial finality. Financial wings must bow before the majesty of law and are to aid and assist the law once settled and not pose impediments or artificial interpretative barriers.

The approach of addressing all the issues above would be different for different categories, that is, pension and service matters, promotions and complaints, discipline and vigilance etc, and hence the recommended approach to overcome the above is being postulated differently for all these classes in the succeeding paragraphs, though it may overlap at places. The reasons for litigation, as above, remain the same for most of the categories of litigation but we shall be alluding to additional points as and where required while dealing with specific issues in our Report.

1.2 CATEGORIZATION OF AREAS OF DISPUTES QUA REDUCTION OF LITIGATION AND EFFECTIVE REDRESSAL OF GRIEVANCES:

We have divided this Report into sub-types since various kinds of grievances require a different approach and varied responses. The following are the Categories which would now be dealt with separately by us:

A. Pensionary and Retiral Matters (Chapter II)

B. Matters concerning Discipline and Vigilance (Chapter III)

- C. Matters concerning Promotions, Confidential Reports and other allied issues for all services (Chapter IV)
- D. Matters concerning Military Justice and reforms thereon (Chapter V)
- E. Matters specifically concerning Civilian Employees (Chapter VI)
- F. Potential areas of disputes and additional observations emanating out of our deliberations (Chapter VII)

CHAPTER

II

PENSIONARY AND RETIRAL MATTERS

2. PENSIONARY AND RETIRAL MATTERS

To begin with, we take up, one by one, the issues concerning litigation and redressal of grievances in aspects concerning pensionary and retiral benefits affecting retirees and their families.

2.1 CAUSES OF LITIGATION:

The reasons and causes of litigation in Pensionary and Service Matters are the same as already articulated in the preceding **Para 1.1** of this Report which may be read as part and parcel of this Section.

There are specific policies related to pension and retiral matters which have led to a bulk of litigation in the defence services. In many of these cases, the policy of the Government itself is liberal and progressive but the interpretation of the same has been literal and restrictive. In fact, in certain cases, though matters are being rejected being against "Government Policy", in reality the said issues are not against Government policy but emanate from a lack of positive interpretation of existing Government policy. In other cases, litigation is purely due to the fact that policy formulation (or amendment or interpretation) in the Ministry and in the Services HQ has not kept pace with the dynamism of policies on the civil side or proactive steps taken by the Department of Personnel and Training (DoPT) and Department of Pension and Pensioners' Welfare (DoPPW) or with interpretation of law as laid down by Constitutional Courts. We would touch upon the change in approach required to address the malaise of rising litigation in pensionary and retiral matters after listing out specific policies and areas which need modification *per se*, alteration or simply a change in interpretation and attitude, along with our strong recommendations on such individual policies which could reduce current litigation levels by a great degree. While some officers who have deposed before us have cited difficulties and involvement of various agencies in withdrawing litigation and appeals, we find this excuse to be quite banal. It is the Ministry of Defence which had decided to file most of these appeals in the first place, and if the Ministry had not opted to file the said appeals, these would not have been pending, hence it is not at all difficult for the same agency to withdraw such appeals in view of decisions by Courts in similar

matters in favour of employees. Moreover, this proactive approach of withdrawing appeals is not new and has happened on multiple occasions in the past. One such letter dated 25-04-2011 directing withdrawal of litigation, is appended herewith as **Annexure-4** to this Report. One instance of a meeting of the Executive authorities of the Ministry and that of the Services HQ on 06-02-2012 had resulted in a decision to withdraw many appeals which brought succour to many veterans and disabled soldiers, but was again derailed due to reasons which can hardly be termed genuine. In fact, the then Secretary ESW had categorically endorsed (recorded at Paragraph 57 of the minutes of the meeting) that appeals and such infructuous litigation should be avoided by the MoD, but unfortunately, the same did not have any effect on the lower echelons which continued with such appeals unabated.

Of course, to bring down litigation as spelt out in the succeeding parts, the approach would have to be top-down with directions originating from the highest echelons since traditionally there has been resistance to any change within the system with many elements more concerned about defending outdated policies and procedures with an utterly conservative approach without realizing the need of moving with the times and adjusting policy and approach with the requirements of law and treating employee satisfaction and morale and adherence to the law laid down by High Courts and the Supreme Court as truly supreme.

2.2 SPECIFIC PENSIONARY POLICIES REQUIRING REVISION/RELOOK

2.2.1

DENIAL OF DISABILITY BENEFITS BY INCORRECTLY BRANDING IN-SERVICE DISABILITIES (DISEASE CASES) AS “NEITHER ATTRIBUTABLE, NOR AGGRAVATED BY SERVICE”:

Paradoxically this is a subject where all stakeholders are in favour of grant of benefits to our disabled soldiers but still the wholly unethical tirade of contesting cases or filing appeals till the highest Court of the land continues which reflects a truly sorry state of affairs due to lack of coordination and moral courage within the system, while our veterans and their families have to bear the brunt and endless visits till the Supreme

Court. In fact, even the Medical Services Advisory Committee (MSAC), the apex medical body of the Armed Forces, and the office of the Director General Armed Forces Medical Services (DGAFMS), who through the medical boards were responsible, till date, for denying disability benefits by declaring disabilities as “Neither attributable to, nor aggravated by military service” (NANA) have shown utmost grace and are in favour of grant of disability benefits in terms of decisions of Constitutional Courts and practical ground realities, still the entire issue which can be easily resolved is held hostage to red-tape and stray voices. In fact, not just the Services HQ but also the Department of Ex-Servicemen Welfare (DESW) have supported the grant of benefits of such disabled veterans. In fact, in a meeting in which even the Hon’ble Raksha Mantri and the Solicitor General were present, the Legal Advisor (Defence) too urged for resolution of this issue after which the Hon’ble Raksha Mantri himself emphasized that all such similar cases needed to be resolved by an appropriate decision (See Paragraph 9 of the Minutes of Meeting taken by the Hon’ble Raksha Mantri on 04-06-2015).

Though the Services HQ, medical authorities and the Ministry of Defence have sought changes in the rules regarding the subject in favour of disabled soldiers, in reality, contrary to popular perception, the rules governing the grant of disability pension in the defence services for disabilities incurred while in service, as promulgated by the Ministry of Defence from time to time, are apt, liberal and also recognize the universally accepted concept of presumption of “service connection” of all disabilities arising during military service. The problem however is that the rigid interpretation and application of said rules in a literal, unscientific and mathematical manner and issuance of contradictory local instructions are leading to denial of disability benefits by incorrectly declaring disabilities “Neither Attributable, Nor Aggravated by military service” (NANA) which are otherwise authorized to be eligible for benefits under the rules. Apart from leading to denial of disability benefits, this also results in denial of any form of pension and consequently a dignified life if the disability of a person discharged with less than pensionable service is declared NANA. To take an example from the Entitlement Rules, 1982, **Rules 5 and 14 (b)** provide that in case of discharge from service in low medical category, there is a codified presumption that the deterioration in health is due to service for disabilities that are contracted in service. **Rule 18** of the Entitlement Rules

clearly states that 'inherent *constitutional* tendency' is not a disease in itself as is routinely declared by the Medical Boards. **Rule 19** provides that if the worsening of a condition persists till the time of discharge, meaning thereby that if the medical category of an individual remains at a worsened stage at the time of discharge (i.e, a person remains low medical category at the time of exit from service) then aggravation ***is to be accepted***. Though **Rule 20(a)** points out that in case nothing is known of the disease and if presumption of entitlement is not rebutted, then attributability should be conceded, still disabilities are routinely declared as NANA with reasons such as 'idiopathic' or 'cause unknown'. **Rule 423** of the Regulations for Medical Services in the Armed Forces (RMSAF) ordains that service in peace or field has no linkage whatsoever with attributability of disabilities to military service but still disabilities are regularly treated NANA on the pretext that the disability had arisen in a 'peace area'. Further **Annexure III to the Entitlement Rules** contains a list of disabilities that are '***affected by stress and strain of service***' and which includes the most commonly found disabilities such as hypertension, psychosis and neurosis etc, still even such scheduled disabilities are being routinely incorrectly declared as 'unrelated to service' by the establishment. Although even the Entitlement Rules, 2010, are liberal in nature, we are purposely not touching upon the same since their legality and the process followed for their issuance is questionable and discussed elsewhere in this Report (See **Para 2.4.8**).

Despite the liberal construction of the rules, with a categorical declaration of 'benefit of doubt' to the claimant in **Rule 9**, soldiers are denied attributability/aggravation to military service in most cases. The problem emanates from an interplay of lack of correct application of rules and law from a multitude of authorities including the office of DGAFMS which had locally issued instructions and DO letters having no sanctity in law, military medical boards as well as Finance elements. Though the fact that soldiers face an inherent stress and strain in their daily routines in military life, in peace as well as field, is well recognized in all democracies and is also recognized by our rules and consistent rulings of Constitutional Courts, that is, our High Courts and the Supreme Court, the resistance to the rule of law continues thereby forcing disabled veterans into litigation. It is also observed that many common disabilities such as hypertension,

seizures/epilepsy, heart diseases, psychosis, neurosis etc which are listed in the Schedule of the Entitlement Rules as ones 'affected by stress and strain of service' are also routinely brushed aside as having been caused during 'peace' or 'not related to service' by directly contravening the provisions of the rules. We are also constrained to observe that heart related disabilities are, even in this time and age, being adjudicated based on the '14 Days Charter of Duties', that is, the activities carried out by the person during the last 14 days from the onset of the disability, whereas even common knowledge dictates that such disabilities arise over a long period of time and not suddenly. The 14 Days Charter of Duties therefore has no logical nexus with attributability/aggravation.

While the world has moved much ahead, as explained above, in India many disabled soldiers are still denied disability benefits on hyper-technical reasons. This is in direct contravention of the Rules as explained above which provide that unless rebutted in writing as to how the disability was such that could not have been detected at the time of entry into service, all disabilities arising in service are to be treated/deemed as service-related irrespective of whether the disabilities occur in peace or field areas. When Courts and Tribunals correctly interpret rules and direct the Services HQ/MoD to grant benefits, the latter are quick to challenge such decisions in the Supreme Court on the pretext of 'contravention of Government policy' forcing poor disabled soldiers into litigation till the highest Court of the land. **It is important to realize that there is inherent stress and strain in military service coupled with the fact that a person stays away from family during most of his/her length of service in a regimented lifestyle under a strict disciplinary code which is recognized all over the world and attributability or aggravation need only be refused in cases of gross negligence, gross misconduct or intoxication since a presumption operates under the rules that all disabilities are affected and at least aggravated by stress and strain of service.** In all democracies, disabilities arising in service or during authorized leave are considered as "attributable or aggravated by military service" except in cases of criminal activities or substance abuse as mentioned above. For instance, **the United States, Code Title 38, Section 105 (Annexure-5)** states the following:

(a) An injury or disease incurred during active military, naval, or air service will be deemed to have been incurred in line of duty and not the result of the veteran's own misconduct when the person on whose account benefits are claimed was, at the time the injury was suffered or disease contracted, in active military, naval, or air service, whether on active duty or on authorized leave, unless such injury or disease was a result of the person's own willful misconduct or abuse of alcohol or drugs. Venereal disease shall not be presumed to be due to willful misconduct if the person in service complies with the regulations of the appropriate service department requiring the person to report and receive treatment for such disease.

(b) The requirement for line of duty will not be met if it appears that at the time the injury was suffered or disease contracted the person on whose account benefits are claimed-

(1) was avoiding duty by deserting the service or by absenting himself or herself without leave materially interfering with the performance of military duties;

(2) was confined under sentence of court-martial involving an unremitted dishonorable discharge; or

(3) was confined under sentence of a civil court for a felony (as determined under the laws of the jurisdiction where the person was convicted by such court).

(c) For the purposes of any provision relating to the extension of a delimiting period under any education-benefit or rehabilitation program administered by the Secretary, the disabling effects of chronic alcoholism shall not be considered to be the result of willful misconduct.

Though the law was fluid till a point of time, now the positive interpretation of rules and grant of disability benefits to disabled soldiers in India has been reinforced by the Supreme Court in many cases including the following:

(i) Civil Appeal No 4949/2013 **Dharamvir Singh Vs Union of India** decided on 02-07-2013 (**Annexure-6**)

(ii) **Three Judge Bench** decision in Civil Appeal No 2337/2009 **Union of India Vs Chander Pal** decided on 18-09-2013

(iii) Civil Appeal No 5605 of 2101 **Sukhvinder Singh Vs Union of India** decided on 25-06-2014

(iv) Civil Appeal No 2904/2011 (Bunch matter) **Union of India Vs Rajbir Singh** decided on 13-02-2015 (**Annexure-7**)

(v) Civil Appeal 11208/2011 **Union of India Vs Angad Singh Titaria** decided on 24-02-2015

(vi) Civil Appeal 4357/2015 **Union of India Vs Manjeet Singh** decided on 12-05-2015

It is however unfortunate to note that the system rather than following the law in letter and spirit or following simple common sense tends to go with the file notes of lower level staff which continues to goad higher authorities to file appeals against disabled soldiers and not move with the times. It is also regrettable to note that rather than writing to military medical boards and Record Offices enlightening them of the interpretation of the Supreme Court in such cases or to take steps which are pro-disabled, letters have been issued to them tacitly instructing them how to technically circumvent the law laid down by the highest Court of the land and dodge beneficial rules.

Military Medical Boards rather need to be sensitized that while categorizing disabilities on the anvil of attributability and aggravation, they must take note of basic common knowledge, practical operating conditions of troops, separation from family, the applicable entitlement rules and decisions of Constitutional Courts rather than locally issued internal instructions such as "Guide to Medical Officers (Military Pensions)". It needs to be emphasized that such internal guidelines can neither override rules, nor practical realities and judicial dicta.

While dealing with disabilities of military personnel, the much argued comparison with an ordinary person is not based on a sound footing. There are times when it is remarked that such a disease may also have arisen had the particular person not been in the Army. The Committee notes that there can be no comparison of the inherent stress and strain of military life with a civilian employee or others and what may be 'lifestyle diseases' for a common person on the street may be aggravated by stress and strain in case of military personnel. A person who is 24 hours / 365 days on call, sometimes under the shadow of gun, under a strict disciplinary code mostly away from his family, in a strictly regimented routine, cannot be simplistically compared with a

civilian employee. The nature of military service denies to all military personnel a commune living with his family or in his hometown, the enjoyment of gazetted holidays and even the enjoyment of normal day to day freedoms such as the very basic liberties of life which are taken by all citizens for granted. Even in a peace area, a member of the military does not have the freedom enjoyed by private citizens, even for something as simple as going to the market, permission is required from higher authorities. Life is highly regulated by order including for matters such as breakfast, lunch, dinner or even going to the toilet or bathroom. When a person is not with his or her family, even common ailments such as hypertension or IHD or minor psychiatric illnesses or psychosomatic disorders are bound to get aggravated by seemingly insignificant incidents at the home or domestic front such as non-performance of children in school, property disputes, red-tapism in other spheres, family problems etc and such practical aspects of life in general cannot be ignored by the system by taking a highly technical and impractical approach of stating reasons such as 'posted in peace area' which have no link with practical on-ground realities. Even non-fulfilment of sexual needs of soldiers by virtue of being away from the spouse could contribute to rise in stress levels, and all such reasons are being conveniently ignored and the stress and strain of military life is wrongly being compared with counterparts in other professions. Most of the said disabilities are also scheduled in the rules as ones 'affected by stress and strain of service' and hence personal opinions such as the commonality of such disabilities in 'civil life' have no sanctity in the eyes of law which is supported by rules and already adjudicated as such by the Supreme Court of India.

During the depositions before this Committee, it also came to notice that there was a wrong notion doing the rounds, and projected as such to senior officers, that the rules and the judgements as above only support disability pension to 'invalided personnel'. It may be placed on record here that the Entitlement Rules cover all personnel who exit with a disability in lower medical category at the time of release from service than the one in which they were recruited and the decisions of the Supreme Court encompass personnel who have been released with a disability under various forms of exit, including invalidation (Premature release on medical grounds), release on completion of terms of engagement, release with a disability on compassionate grounds and

superannuation or retirement with a disability. In fact, **Angad Singh Titaria's** decision (supra) specifically dealt with an individual retired on reaching the age of retirement while there were many cases of disabled soldiers released on various accounts as above in the bunch matter of **Rajbir's** case (supra).

The very fact that it has been established that the life span of soldiers is much lesser than civilian employees points directly to the fact that stress and strain of military service affects all soldiers adversely and the said proposition is hardly debatable.

It is observed that even psychiatric disorders are quickly blamed on "domestic factors" not comprehending the basic fact that such "domestic" reasons have a direct linkage with service conditions. For example, if a person is facing any domestic issue at home as explained in the preceding paragraphs (including property dispute, education of children, lack of support to family or elderly parents etc) which may anyway be accentuated by the inherently indifferent attitude of civil administration towards soldiers' requirements in many instances, the very fact that he/she is away from his family for most part of the year increases stress levels thereby aggravating such disabilities since he cannot attend to such domestic commitments the way he could have, had he been living with his family. The simple question that needs to be put to ourselves is that would he/she have had the same stress levels had he/she been living with family? The answer would be in the negative. Separation from family, a hallmark of military life, itself raises stress levels and the direct reason for the same is military service and hence the organization cannot wash its hands off such disabilities by terming the same as due to 'domestic reasons'. **We are fortified in our view not only by successive Raskha Mantris' Demi Official communications admitting the link between inability to cater to domestic responsibilities and stress levels in the military (Annexure-8) but also by a decision of the Supreme Court in Civil Appeal 5140/2011 allowed on 09-10-2014 K Srinivasa Reddy Vs Union of India in which it has been underlined that there was an aggravating factor of the disability of the soldier since he was torn between the call of duty on one side and the illness of his father and domestic commitments on the other. The reason given by the medical board to reject disability benefits on the ground that the soldier was 'brooding over family issues' was rejected by the Apex Court. To hence blame psychiatric disabilities**

on domestic reasons goes against the very grain of the statement of successive Raksha Mantris and also law laid down by the Supreme Court and High Courts which in any case is binding on all parties, including this Committee.

Moreover on the subject of service in peace vis-a-vis field areas, it is observed that the following important mention in Paragraph 47 in the Guide to Medical Officers, 2002, was eliminated in the 2008 edition, regressively, and apparently without any reference to any scientific research in the footnotes:

“...The magnitude of physical activity and emotional stress is no less in peace area. Tough work schedules and mounting pressure of work during peace time compounded by pressure of duties, maintenance of law and order, fighting counter insurgency and low intensity war in deceptively peaceful areas and aid to civilians in the event of natural calamities have increased the stress and strain of service manifold. Hence no clear cut distinction can be drawn between service in peace areas and field areas taking into account quantum of work, mental stress and responsibility involved. In such cases, aggravation due to service should be examined in favour of the individual...”

Besides the fact that there has been no answer as to why was the paragraph deleted, there is also no answer forthcoming as to why the above was only included in Paragraph 47 (Ischemic Heart Disease) but not included for other disabilities which are equally affected by stress and strain. There is also no answer as to why the Guide to Medical Officers had proclaimed that attributability/aggravation would not be conceded in soldiers serving in ‘peace’ areas whereas the rules impose no such prohibition and in fact reiterate that service in ‘peace’ or ‘field’ areas is of no significance for adjudging disabilities. There may be multiple instances where a person serving in a particular high pressure appointment in a peace area would be facing much higher stress than another in a relatively less stressful appointment in a field area. There is also no explanation as to why the Schedule of Entitlement Rules containing a list of diseases ‘affected by stress and strain of service’ is not honestly reproduced in the Guide to Medical Officers and why some diseases are mysteriously missing from the list reproduced in the Guide, including the most common disability of ‘hypertension’. The silver lining however is that

the present dispensation in the office of the DGAFMS is fully sensitized and realizes the gravity of the above and is in agreement that such instances should have never occurred. They have also made an honest effort to find out the source of such unauthorized changes but have been unable to pinpoint responsibility to the said effect. Our aim however is not to indulge in a fishing inquiry and would let the past be past. We still would place on record the moral courage of the current team in the office of the DGAFMS in assuring their sensitivity towards the issue and also fully agreeing upon the liberal interpretation of rules, as already interpreted by the Supreme Court. In fact, going a step forward, the MSAC and the office of DGAFMS progressively feel that the concept of attributability or aggravation should be abrogated altogether and all disabilities incurred in service should be deemed as relatable to service. The approach till now has been not only against the universally accepted norms for “service-connection” but also unscientific leading to denial of service benefits fully entitled under rules to our disabled soldiers who have been forced into litigation and then further forced to fight till the highest Court of the land. It has also been hinted that many “senior” officers “manage” to get themselves medically downgraded to claim disability pension at the fag-end of their careers. The Committee notes that the rank of a claimant is immaterial for claiming disability pension if admissible under the rules, however cases of feigning disabilities where none exist should be dealt with strongly and medical boards should also be extra careful in examining cases where individuals have reported with a medical condition just before retirement.

While the medical authorities have, as stated above, thankfully already realized the fact that in accordance with rules and the law laid down by the Supreme Court, grant of ‘attributability/aggravation’ is the rule rather than the exception unless a link is evident with a pre-existing condition or a person’s own misconduct, financial authorities are still resisting progressive change in this regard. As harsh as it might sound, the opinion of the financial bodies or accountants cannot override medical opinion or law laid down by the apex Court and the job of finance instrumentalities is not to interpret medical conditions by going against the law as laid down, but only to render inputs on financial implications where required. The length and breadth of the charter of operation available to financial authorities is amplified in detail in another part of the instant report

(See **Para 2.4.3**). Instances have been pointed out to us where the finance authorities have cited locally issued instructions to reject disability claims by ignoring actual rules, declarations of medical authorities, legal advice and even Supreme Court decisions. We are surprised to note that when even in a meeting with the Hon'ble Raksha Mantri positive statements have been made regarding progressive grant of disability benefits in terms of Supreme Court decisions, and when the Services HQ, the DESW/MoD, the MSAC and the office of DGAFMS have also endorsed the view which is anyway law declared by Constitutional Courts, the financial entities are still opposing the same and indulging in hyper-technical surgical interpretation in this regard and that appeals are still being filed and cases contested in Courts and Tribunals. We are sorry to observe but the political will of the Hon'ble Prime Minister and the Raksha Mantri, the legal opinion of the Legal Advisor (Defence) and the endorsement of the executive authorities thereon with the overarching law declared by our High Courts and the Supreme Court, cannot be held hostage to the personal opinion of financial authorities who have no right to comment on the merits of disabilities but are only supposed to release and calculate amounts as ordained by law. It is surprising that once even the apex medical body, that is, the MSAC has itself conceded that medically speaking almost all such disabilities are affected by military service, which is also a universally accepted military norm, then why should other authorities be allowed to override the said reality. When it is also accepted by all stakeholders that life expectancy of members of the military is much lower than civilian employees, then there should remain no controversy on the effect of military service on the health of individuals. In any case, such instances are contemptuous to the decisions of the Supreme Court and we must remind here that under Article 144 of the Constitution, all authorities are to bow down to the majesty of the law laid down by the Supreme Court and act in the aid of the Supreme Court.

The health of our troops, our responsibility towards our veterans, the lesser life expectancy of our soldiers and veterans, cannot be measured in monetary terms or by denying them minor amounts which they are fully entitled to under the rules. Even as back as in 1982, the Constitution Bench of the Supreme Court in **DS Nakara's** case had endorsed the securing of socio-economic justice in a rapidly growing and flourishing State which can afford such benefits which are anyway admissible under law. In any

case, all parties are bound by the law laid down by the Supreme Court and dissenting personal opinions have no legal sanctity in view of the settled law as per decisions mentioned in the preceding paragraphs, the practical realities and also the statements of the highest of political executive regarding the stress and strain of military life.

In view of the foregoing, the Committee notes and recommends the following:

(a) According to rules, as also endorsed by the Supreme Court, a benefit of doubt regarding 'attributability/aggravation' or 'service-connection' needs to be granted to any disability arising during service [See Paragraph 32 of ***Dharamvir Vs Union of India*** (supra), Paragraphs 15 & 16 of ***Union of India Vs Rajbir*** (supra)]. The same however can be denied when it is shown that the disability is due to a person's own gross misconduct or negligence, illegal activity, substance abuse or intoxication. The same is also a universally acceptable norm in all democracies [See Rule 105 of US Code 38 (supra)]. The same benefit is also admissible in 'death' cases due to in-service disabilities leading to entitlement of Special Family Pension for families. The said proposition is also agreeable to all stakeholders including the medical side with the apex medical body, the MSAC, also on board.

(b) There is no linkage with 'peace' or 'field' service as far as attributability of disabilities is concerned and any such differentiation locally put across by the office of DGAFMS in the past or professed by any other authority is illegal, contrary to Entitlement Rules, contemptuous towards decisions of the Hon'ble Supreme Court and also against Regulations for Medical Services in the Armed Forces (See Para 33 of ***Dharamvir Singh Vs Union of India*** and **Regulation 423 of RMSAF**). So for example, if a soldier develops Heart Disease while in service, the benefit of doubt needs to be extended to 'service-connection' and the claim need not be rejected on grounds such as 'served in peace area' or 'cause unknown'. The claim can only be rejected in case of a note of disability at the time of entry into service or reasons such as '*heavy smoking*' or '*lack of dietary control leading to obesity and heart disease*' are recorded, if applicable.

Otherwise, the presumption operates in favour of soldiers, as per rules and as held by the Supreme Court.

(c) Broadly blaming domestic reasons for psychiatric disabilities arising during military service is against common knowledge and unethical since domestic reasons are bound to give rise to stress and also to aggravate the same in soldiers because of the very fact that due to military service they remain away from their families most of the year and cannot hence cope up with all familial requirements efficiently by virtue of their being absent from home. Putting the blame on 'domestic reasons' not only gives out a message that the organisation is simply washing its hands off the responsibility towards such soldiers but also results in denial of pensionary benefits to such affected soldiers and their families. The issue already stands addressed in ***K Srinivasa Reddy Vs Union of India*** (supra) and also explained in detail in the preceding paragraphs by us. The said principles and causative factors of stress also stand endorsed by way of DO letters written to Chief Ministers by successive Raksha Mantris, which of course has also not resulted in desirable results and needs renewed efforts.

(d) All concerned agencies should realize that non-grant of "attributability" or "aggravation" on flimsy grounds results in denial of pensionary benefits and consequently denial of a life of basic dignity to disabled soldiers. While it may be just a casual stroke of a pen for a medical board, it may be a question of survival for a soldier or his family. The exercise needs to be undertaken in a common-sense oriented, practical, liberal and scientific manner. Guidelines, if any, may not operate in derogation of actual rules and need to move with the times as per global norms based on scientific studies. The lack of transparency of past amendments in the "Guide to Medical Officers (Military Pensions)" wherein the said amendments do not even carry the footnote of the study or the basis leading to the change/amendment is highly avoidable and so is the tendency not to honestly reproduce the actual rules in the said guide and eliminating important parts such as the erstwhile Para 47 of the 2002 version which has vanished without trace and without reasoning and the spirit of which needs to be restored. All authorities, including Medical Boards shall decide attributability/aggravation

on a case to case basis as per law laid down by the Supreme Court based on the interpretation of actual rules and ground realities of the inherent stress and strain of military life, rather than the mathematical guidelines of the Guide to Medical Officers or locally issued instructions and DO letters written to medical boards.

(e) Cases of feigning of disabilities where none exist should be dealt with strongly and medical boards should also be extra careful in examining cases where individuals have reported with a medical condition just prior to retirement or release.

(f) The current approach shows that despite clear cut law laid down by the Supreme Court and also the spirit of the rules, there is resistance in accepting the settled legal position based on hyper-technical hairsplitting reasons. The concerned authorities must accept gracefully and with all humility the law laid down by the Apex Court and come to terms to the same since an approach of resistance is not only against law but also at odds with global practices for disabilities incurred during military service.

(g) It is further recommended that henceforth in medical boards, all disabilities arising in service may be broadly dealt with on the anvil of the above practical realities, **all appeals pending against such disabled soldiers filed in the Supreme Court be withdrawn immediately and pending or future litigation in Courts and Tribunals related to past cases of disabled soldiers may be dealt with by Government lawyers in judicial fora on the basis of Supreme Court decisions as above, except in cases of gross misconduct, negligence, substance abuse or intoxication, on a case to case basis.**

Needless to state, the same principles also apply to deaths while in service.

2.2.2

RATIONALIZATION OF DISABILITY BENEFITS FOR 'NON-ATTRIBUTABLE/NON-AGGRAVATED CASES' ARISING OUT OF INJURIES/DEATHS DURING AUTHORIZED LEAVE:

Non-grant of benefits, that is, disability pension to personnel injured and Special Family Pension to families of personnel who die, while on authorized leave has been a sore point with military veterans. This issue, apart from being a source of agony, has also resulted in heavy litigation with Hon'ble Courts in the recent past tilting towards the view that a benevolent approach needs to be adopted in such matters being beneficial provisions meant for the welfare of soldiers.

The problem is compounded by the fact that provisions of Section 47 of 'Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995' are not applicable to the armed forces. Hence if a civilian employee gets disabled whether on duty or off duty, whether due to service or otherwise, whether due to own negligence or not, in whichever circumstance, his or her service is protected under the ibid Act and if the said employee is not able to work, still he or she is to be paid all pay and allowances till the age of 60 and full pension thereafter even if he/she cannot attend office by keeping the person on supernumerary strength, but the Armed Forces have been exempted from the progressive provisions of Section 47, obviously since the uniformed services are meant to retain a fit fighting profile. The debatable question however is that while retaining a fit profile is acceptable, why should those who leave service with a disability not be granted compensation to maintain a dignified life? Why should uniformed personnel suffer from both ends- not retained in service and not even granted disability benefits and also no pension in case the service is less than 10 years?

It may be important to observe that though there is no direct prohibitory stipulation in the Entitlement Rules for refusing attributability (and therefore disability pension) due to injury/death while on leave, attributability is generally declined on the pretext that there is no "causal" connection between a death/injury and military service while a person is on leave. Though there exists a stipulation in the Entitlement Rules, applicable from

time to time, stating that accidents relatable to “incidents of service” are to be treated attributable [For example, **Rule 12(f)** of Entitlement Rules, 1982], the said provision has not been beneficially extended to cover injuries/deaths during authorized leave though leave is understood to be an incident of military service. In fact, rules clearly provide that attributability is to be conceded even if the person is strictly not on duty in case the disability is related to the obligations and incidents of service. Currently only those disabilities are being considered eligible for disability benefits which occur while in transit towards home station or back.

As explained in the preceding, the shield of Section 47 of the Persons with Disabilities Act, 1995, is not available to defence personnel which directly means that protection of service is not guaranteed to defence personnel if they are disabled while in service whereas civil employees are guaranteed service till the age of retirement, that is, 60 years, even if they are unable to perform any duty due to a disability (whether attributable/aggravated or otherwise). This makes it even more important for the system to be liberal in its dispensation of disability pensionary benefits to defence personnel who are injured while on leave in such circumstances in all those cases where they are not to be blamed for the said disability or situations beyond their control.

In view of the heartburn and agony caused by this singular issue amongst veterans, there is a need for the Department of Ex-Servicemen Welfare to rationalize the existing provisions or issue standing directions based on existing rules for consideration of injuries/casualties during leave as ‘attributable to service’ unless there is an element of gross negligence, gross misconduct or intoxication involved on the part of the individual. It may be pointed out here that even the apex medical body- the MSAC and the office of DGAFMS, MoD are in the favour of granting benefit for injuries caused during authorized leave. In fact, the office of DGAFMS has very aptly submitted that there should be no distinction between duty or leave in case of accidents since an accident can occur to anyone anywhere and the net result is the same, that is, disablement of an in-service individual who loses his/her capacity to earn or even his/her livelihood and a dignified life for himself/herself and even for his/her family if the disability is declared

“not related to service”. The office of DGAFMS has strongly submitted that disability pension is compensation for the functional incapacitation and not for the administrative circumstances under which the disability was incurred. We fully support this view and it is in consonance with our thought-process and the need of the hour. It may be recalled that even in cases of such injuries during leave, the disabilities are bound to get aggravated within the meaning of Rule 19 of Entitlement Rules with further service, even if the same is brief.

The following points make it pertinent to concede attributability in cases of casualties during authorized leave:

- Leave is an incident (incidence) of service and due to the inherent nature of military service, personnel have to undertake excessive movement by various means of transportation during the limited time at home to attend to domestic requirements which they cannot attend to while they are away from family during military service. This consequently gives rise to a greater risk of injury.
- Provisions of Section 47 of the Persons with Disabilities Act, 1995, are not applicable to defence personnel and they have no protection of service as is applicable to civil employees in case of disability. In fact, civilian employees are guaranteed service till the age of 60 years and full pension thereafter in case of any form of disability and are to be kept on supernumerary strength even if such employees are unable to attend office.
- Defence personnel are subject to strict disciplinary military codes while on leave thereby also being amenable to punishments for acts and omissions while on leave and hence if defence personnel can be punished for their actions while on leave then all benefits must also flow for accidents that happen during the same period whenever the disability is resultant of an action for which the individual is not to be blamed. If a high degree of discipline coupled with a strictly regimented life is expected from defence personnel even while on leave and if all disabling provisions of military law are to apply to a defence employee even when he/she is at home, then a corresponding duty of applicability of enabling provisions can also be legitimately expected by such an employee while on leave. Merely because an accident which is unavoidable and in consonance with conditions of regular modern living conditions takes place during leave should not ideally result in disadvantage to defence personnel.

- Leave Rules *inter alia* themselves provide that Casual Leave is treated as duty and even Annual Leave is notionally treated as duty [Rules 10 and 11 of Leave Rules for the Services (Army)]. It is also commonly known that defence personnel are deemed to be on duty 24 hours a day, 365 days a year and hence it may not be proper to divorce service benefits from a period when personnel are on leave. Such personnel are expected to respond to calls of duty even while on leave. Defence personnel are also obliged to react to situations requiring the use of military skills during leave if the situation so warrants.
- Leave has also been recognised as a basic human right by the United Nations in Article 24 of the Universal Declaration of Human Rights, 1948, also emphasized recently again by the Punjab & Haryana High Court making it all the more important not to separate it from service life of defence personnel. It has also been observed in the said decision that leave is required in the forces to maintain mental equilibrium and balance and to remain in touch with the civil society to prepare personnel for arduous duties and is an essential part of service life. Leave, being a part of service for psychological upliftment prepares a person for further service and is just a form of periodic notional break and hence cannot be divorced from a person's actual service.
- In most modern operationally active armies, the benefit of disability benefits is given to injuries during authorized leave. In fact, in the United States of America, the rules on the subject where are the closest to India, it is provided by Code 35 Section 105 (**Annexure-5**) that all disabilities incurred while on service **including those sustained on authorized leave** are to be treated as having sustained in the 'line of duty' except those arising out of willful misconduct or alcohol/drug abuse. In all modern armies, some kind of a social security or protection is provided for such disabilities.
- As also submitted by the office of DGAFMS, MoD, there should be no distinction between duty or leave in case of accidents since an accident can occur to anyone anywhere and the net result is the same, that is, disablement of an in-service individual who loses his/her capacity to earn or even his/her livelihood and a dignified life for himself/herself and for his/her family if the disability is declared "not related to service". The office of DGAFMS has strongly submitted that disability pension is compensation for the functional incapacitation and not for the administrative circumstances under which the disability was incurred.

There has been a variety of decisions which have minutely examined the grant of disability/casualty benefits to personnel injured or who died while on authorized leave.

There are admittedly some decisions which also state that as per rules, disability pension is not admissible in disabilities arising during leave if the injury is the result of an action inconsistent with standards expected from a soldier- a recent one being **Civil Appeal 6583/2015 Union of India Vs Ex Naik Vijay Kumar**, though the same is based on distinct facts wherein the soldier was climbing up the stairs at his sister's house for the purposes of **smoking**.

Some of the positive decisions however go much beyond the rules as literally understood, and explain why grant of such benefits is desirable; such decisions are as follows:

- Supreme Court: **Civil Appeal 2903/2011 PCDA(P) Vs ML George** decided on 17-09-2014 (**Annexure-9**)
- Division Bench of the Hon'ble Punjab & Haryana High Court: **CWP 17792/2013 Barkat Masih Vs Union of India** decided on 23-05-2014
- Supreme Court: **Civil Appeal (D) 6612/2014 Union of India Vs Vishal Raja** decided on 07-04-2014 wherein the decision of Chandigarh Bench of Armed Forces Tribunal in OA No 652/2010 was upheld in Civil Appeal
- Supreme Court: Civil Appeal 377/2013 **Nand Kishore Mishra Vs Union of India** decided on 08-01-2013 against which even a Review Petition filed by the Ministry of Defence was dismissed.
- **Full Bench** of the Hon'ble Punjab & Haryana High Court: **LPA 978/2009 Khushbash Singh Vs Union of India** decided on 31-03-2010 (**Annexure-10**)
- Supreme Court: **Civil Appeal 1926/1999 Madan Singh Shekhawat vs Union of India** dated 17-08-1999

In view of the above logic and reasons, and also the legal position solidified by judicial pronouncements, it is recommended as following:

(a) That it may be decided that injuries or deaths during periods of authorized leave/absence (except in cases of gross negligence/ gross misconduct/ intoxication/ action inconsistent with military service) may be deemed as 'attributable to service' by issuing a clarification to the effect. It may be decided to interpret the existing rules in a beneficial manner in line with the points expressed above and also in line with the beneficial spirit in which the rules were promulgated.

(b) This singular action would not only result in reducing litigation drastically but also act as a morale booster for disabled military veterans and families of personnel who may have died during periods of authorized leave, besides elevating the respect for the system in the eyes of the military community. This assumes even more importance since the protection of Section 47 of the Persons with Disabilities Act, 1995, is not available to defence personnel.

(c) Clarification to the above effect may be issued to all concerned for future cases. **All appeals in the Hon'ble Supreme Court on the said subject are recommended to be withdrawn and all pending litigation in Courts/Tribunals or future litigation for similar past cases that may arise, may be directed to be conceded in favour of claimants except in cases where the soldiers have themselves been found blameworthy for the disability.**

2.2.3

DISABILITY BENEFITS TO VOLUNTARY RETIREES:

Prior to 2006, disability pension was being denied to disabled soldiers who sought premature retirement or release from service on compassionate grounds. The Government was denying disability pension to voluntary retirees on the false pretext that such retirees are granted '*lumpsum compensation in lieu of disability pension*' and hence grant of disability pension would result in double benefit (See Para 5.1.69 of 6th Central Pay Commission Report- **Annexure-11**). This argument was however faulty and apparently based on incorrect inputs to the Pay Commission, since firstly, the applicable rules clearly provide that only one benefit is admissible, that is, either lumpsum

compensation in lieu of disability pension or proper disability pension as becomes clear from a perusal of the applicable Government letter (See **Paras 8.1 and 9.1 of Annexure-12**) therefore there was no question of double benefit since only those individuals could claim disability pension who had not been granted lumpsum compensation in its lieu and if disability pension had been opted for, then there was no entitlement for disability pension in the future. Secondly, even lumpsum compensation, whenever awarded, was recovered from officers seeking voluntary retirement with interest and in fact a certificate of undertaking was taken to the effect that concerned officers would refund the lumpsum compensation in case they took Pre-mature retirement (**See Annexure-13**). The whole denial of disability benefits to voluntary retirees was hence based on a false foundation, wrong inputs and unethical propaganda and what to talk of 'double benefit' such personnel were not even granted the single admissible benefit.

Disability benefits continued to be denied to such disabled voluntary retirees (especially Commissioned Officers) based on the then existing regulations and also a Supreme Court decision on the same subject favouring the Ministry. However later, the Government itself abrogated the said arbitrary stipulation on the basis of the recommendations of the 6th Central Pay Commission and allowed disability pension to voluntary retirees. However the said benefit was given by the Ministry only to those who had retired after 01-01-2006 although no cut-off date was prescribed or articulated by the Pay Commission. This cut-off date was brought to the notice of Courts and was struck down and later the striking down was upheld by the Supreme Court in **Civil Appeal 9827/2011 Union of India Vs Gp Capt JK Kaushik decided on 03-07-2013** and other similar subsequent cases. In utter disregard of judgments, the Ministry continues to deny disability pension to officers who had sought premature retirement before 01-01-2006 and keeps filing appeals in each and every case where the benefit has been granted by Courts citing 'Government policy' when in fact no such Government policy now exists having been set-aside by judicial intervention.

It may be pointed out that the Dept of Pensions and Pensioners' Welfare (DoPPW) on the civil side has extended all 6th CPC recommendations implemented for post-2006

retirees to pre-2006 retirees too, with financial effect from 01-01-2006, but the Dept of Ex-Servicemen Welfare (DESW) of the MoD continues to deny the same logic to defence retirees. **An example is the introduction of the Constant Attendant Allowance (CAA) to civil retirees on the lines of defence retirees on recommendations of the 6th CPC w.e.f 2006. The CAA has been extended to all pre-2006 retirees by the DoPPW w.e.f 01-01-2006 and is not just limited to post-2006 retirees and the applicability of the newly introduced concept to pre-2006 retirees has been clarified by the DoPPW vide Para 4 of its letter dated 03-10-2008 (Annexure-14). The Ministry of Defence however continues to deny the same logic to its military veterans.**

Rationalization of this anomaly appeals to logic too since a disability does not cease on voluntary retirement. There are even cases of officers who have lost their limbs in war and have not been granted disability or war injury pension only since they had sought retirement on compassionate grounds. This problem alone has been a cause of massive litigation and also heartburn.

It is hence recommended that disability pension may not be denied to pre-2006 voluntary retirees with the following in the backdrop:

(a) The denial itself was based on a false foundation of 'double benefit' as also incorrectly projected to the pay commission, but in reality there was no such availability of a 'double benefit' as explained above and hence the reason for such prohibition itself is invalid. A disability or a war injury does not cease on voluntary retirement and even otherwise the cut-off date now stands struck down and the striking down has been upheld by the Hon'ble Supreme Court. It is even otherwise discriminatory The Department of Pension and Pensioners' Welfare has extended the benefit of Constant Attendance Allowance (CAA) to pre-2006 as well as post-2006 eligible civilian disabled retirees but with financial effect from 01-01-2006, hence it is not logical for the DESW to alone deny benefits based on such artificial cut-off dates. The pain and agony caused by an injury prior to 2006 or after 2006 is the same.

(b) It is recommended that till the time the policy is comprehensively revised, all appeals filed in the Supreme Court on the said point by the MoD may be withdrawn, no fresh appeals be filed and pending litigation in various Tribunals be conceded on a case to case basis.

2.2.4

ILLEGAL DENIAL OF PENSION BENEFITS TO PRE-2006 RETIREE HONORARY NAIB SUBEDARS:

Prior to 01-01-2006, Havildars granted the Honorary rank of Naib Subedar were entitled to the pension of a Havildar and not of a Naib Subedar, with an additional element of Rs 100.

Havildars granted the honorary rank of Naib Subedar were recommended the pension as applicable to regular Naib Subedars by the 6th Central Pay Commission. The recommendation was accepted. When the letter was finally issued, the letter simply (rightly) stated that it was applicable w.e.f 01-01-2006. However the same was interpreted to mean that it would only be applied to those who retire after 01-01-2006 whereas there was no such explicit stipulation in the master letter. This has given rise to a spate of litigation since such an interpretation is conceptually wrong and faulty because whenever a new grade/scale is granted to any section of retirees or to serving officers, the old retirees of the same level/rank are granted pensions based on the new grade/scale as per the principles of modified parity. However in this particular case, an illogical category was created wherein Honorary Naib Subedars who retired before 01-01-2006 were being paid the pension of a Havildar (with an additional Rs 226) while those who retired after 01-01-2006 were being paid the pension of a normal Naib Subedar based on the new scale introduced w.e.f 01-01-2006 for Naib Subedars. It may be pointed out here that in all categories of employees whose scales have been upwardly altered at a later date or any new stipulation included on a later date, the benefit of pensions based on new scales has been extended to pre-2006 retirees w.e.f 01-01-2006 (for example, Lt Cols, Lt Gens, HAG Scale for Additional Secretaries to Govt of India on the civil side etc), however the said logic had not been applied to Honorary Naib Subedars.

The AFT stuck down this discrimination which was later upheld by the Supreme Court in **Special Leave to Appeal (Civil) CC 18582/2010 Union of India Vs Virender Singh dated 13-12-2010**. However in one of the many orders of the Supreme Court there was

a scripting error which some elements in the officialdom made use of for putting the entire system into chaos and the MoD suddenly stopped implementing judicial orders. Later, after a getting series of similar cases dismissed from the Supreme Court, the MoD filed yet another appeal on the same grounds in which a notice was issued by the Supreme Court and ultimately which was dismissed by the Supreme Court on 20-05-2015 (***Civil Appeal 4677/2014 Union of India Vs Subhash Chander Soni***).

The policy has still not been rationalized and even the decisions of the Tribunals to the same effect for affected retirees have not completely been implemented. Further, the Ministry has created yet another anomaly in the subject wherein though the difference/distinction for the purposes of pension between post-2006 Regular vis-a-vis Honorary Naib Subedars has been abrogated, the difference between pre-2006 Regular vis-a-vis Honorary Naib Subedar has further been widened giving scope to yet another round of litigation.

The committee recommends the following to tackle this issue once and for all since it has resulted in massive litigation which shall soon get further compounded due to faulty policies:

(a) Pensions of Pre and Post 2006 Honorary Naib Subedars be calculated using the same base of the new scale of Honorary Naib Subedar/Naib Subedar introduced after the 6th CPC as directed by the AFT and upheld by the Supreme Court. This must be the only category of employees wherein pensions are being calculated on different scales- those of pre-2006 Honorary Naib Subedars are being calculated based on the scale of a Havildar while those of post-2006 retirees are being calculated based on the scale of a Naib Subedar. To take an example, when a new scale was introduced in the year 2009 for Additional Secretaries to Govt of India and Lt Gens of the Army over and above the recommendations of the 6th CPC, the pensions of all pre-2006 retirees of the grade of Additional Secretary (HAG) as well as Lt Gens were re-calculated on the basis of the newly introduced scale, which system is a standard practice since the 5th CPC, hence there was no occasion for treating the rank of Honorary Naib Subedar differently. In any case, any personal opinion to the contrary is irrelevant.

(b) Since the pay for the purposes of fixation of pension for Honorary Naib Subedars and Naib Subedars has been equated by the Govt for post-2006 retirees and the distinction between post-2006 and pre-2006 has been struck

down and the striking down has been upheld by the Hon'ble Supreme Court, the pension of pre-2006 Honorary Naib Subedars vis-a-vis pre-2006 Regular Naib Subedars may also be equated since a wide disparity has been perpetrated between the two which should have been taken care of by the establishment itself since the said issue also stands covered in spirit by the *ibid* decisions. The system as followed for Honorary Naiks and Honorary Havildars can be followed for Honorary Naib Subedars too, that is, pension of Honorary Naib Subedars can be fixed one rupee (Re 1/-) lower than Regular Naib Subedars as per the dispensation in vogue for Honorary Naiks and Honorary Havildars. Any discrimination limited to the rank of Honorary Naib Subedar is hence highly incongruous.

2.2.5

LITIGATION ON DENIAL OF BENEFITS FROM 1996 TILL 2009 TO PENSIONERS (OTHER THAN COMMISSIONED OFFICERS) WHO RETIRED PRIOR TO 10-10-1997:

On the implementation of the 5th CPC which was to have effect from 01-01-1996, a gazette notification was issued by the Govt after due approval of the Cabinet which stated that though the scales were being mentioned as recommended, **the Ministry was carrying out trade rationalization and removing anomalies from the said scales and the scales would finally be implemented once the said rationalization was complete and that the said anomaly-free rationalized scales would replace the non-rationalized scales with effect from 01-01-1996 (See 1(b) and Para 4 of Annexure-15), also reproduced below:**

New Delhi, the 13th October, 1997

Asvina 21,1919 (Saka)

RESOLUTION

No. 1(3)97/D (Pay/Services)

The Fifth Central Pay Commission.....recommendations of the Commission on the matters aforementioned in respect of these categories of employees shall be accepted broadly subject to the modifications mentioned below:-

* * *

(b) **The scales of pay to be assigned to PBOR may be based on trade rationalization to be carried out by Ministry of Defence.**

* * *

4. **The revised scales of pay shall be made effective from 1-1-1996.**

Sd/-

(M.S. Sokhanda)

Joint Secretary to the Government of India.

Strangely however, when the anomalies were removed, trades rationalized and the new scales finally implemented, these were implemented w.e.f 10-10-1997 through a Special Army Instruction (SAI) 1/S/98 (**Annexure-16**) (and parallel instructions for the other two services) and were not implemented w.e.f 01-01-1996 as already approved by the Cabinet and promised and also notified in the Gazette of India as above.

Later when pensions were improved from time to time or further anomalies rectified, the said improvement/revision for those who retired prior to 01-01-1996 or those who retired between 01-01-1996 and 10-10-1997 was based on the anomalous scales of 1996 rather than the anomaly-free trade rationalized scales introduced in 1997 which were in fact to take effect from 1996 thereby replacing the old non-rationalized scales. Multiple decisions in favour of pensioners were rendered thereafter by High Courts which stated that the new scales were to take effect from 01-01-1996 and not 10-10-1997 and affirmed by the Supreme Court as such in **Special Leave to Appeal CC 15128/2008 Union of India Vs Jai Narayan Jakhar** dismissed on 21-11-2008 and **Special Leave to Appeal CC 688/2010 Union of India Vs Ram Kumar Bishnoi** dismissed on 25-01-

2010 but still no constructive action was taken on the subject. Even otherwise, it is common knowledge that whenever an anomaly is sought to be removed, it is to be removed from the date of inception of the anomaly and not any artificial future cut-off date. The situation was finally rectified by the Defence Ministry w.e.f 01-07-2009 after a report of a Committee of Secretaries thereby granting the benefits from 01-07-2009 onwards and denying our pensioners the correct pension from 01-01-1996 till 30-06-2009. Hence not only was there a contravention of a gazette notification issued after approval of the Cabinet, but also disregard to directions of our Constitutional Courts. To put it succinctly, this amounted to denying, by a sleight of hand, the benefits legally admissible to our soldiers, sailors and airmen. Many decisions rendered on the same lines by the AFT are now *en masse* being challenged in the Supreme Court and when in a few such cases the Supreme Court directed the Ministry to file a review application before the AFT, the Ministry rather than filing reviews in those particular cases has started filing review petitions in all such cases decided by various benches of AFT till date thereby leading to a flux of litigation on this subject where time and money of the Government as well as the litigants is being wasted due to unnecessary obduracy while the case is not only settled by pronouncements affirmed by the Supreme Court but also by a Gazette notification issued after approval by the Cabinet.

The Committee recommends the following on the above subject:

(a) The fresh scales introduced with effect from 10-10-1997 were bound to take effect from 01-01-1996 as per the gazette notification issued by the Govt of India which had the due approval of the Cabinet (**Para 1(b) and 4 of Annexure-15**). Any later executive instructions restricting the effect from 10-10-1997 onwards is null and void in the face of the gazette notification and hence all litigation initiated on the said point (popularly known as *Jai Narayan Jakhar's* case) is unethical and needs to be withdrawn, whether it comprises Review Applications in the AFT or in the High Courts or appeals in the Supreme Court since the issue specifically has been upheld by the Supreme Court in *Jakhar and Bishnoi* cases (*supra*).

(b) The above view is also fortified by various decisions of the Supreme Court in which it has been held that once an anomaly is removed, it needs to be removed from the date of its inception with full arrears from backdate and not an artificial future cut-off date. Prominent amongst such decisions are ***KT Veerappa Vs State of Karnataka 2006 (9) SCC 406***, ***Civil Appeal 1123/2015 State of Rajasthan Vs Mahendra Nath Sharma*** decided on 01-07-2015 and ***Civil***

Appeal 8875/2011 Union of India Vs Sqn Ldr Vinod Kumar Jain decided on 17-03-2015.

(c) That even otherwise, whenever such anomaly has been removed from the scales of other classes of employees, including civilians and commissioned officers, the said rectification in pension or pay and allowances has always taken effect from the date of implementation of recommendations of the pay commission, and not any future cut-off date. For example, when the new pay grade of Rs 67000-79000 was implemented for Additional Secretaries to Govt of India and Lt Gens in 2009, it was implemented with effect from 01-01-2006 for pay and allowances purposes of serving officers and for pension calculation purposes for pre-2006 retirees whose pensions were now based on the freshly introduced scales of 2009 with financial effect from 01-01-2006. Similar is the case for all other ranks and grades. Hence, it makes no logic to treat lower ranks of the three defence services differently. Even the arrears in the “rank pay” case, after the decision of the Supreme Court, were granted to all officers recently with effect from 01-01-1986 with interest.

(d) Though we are not recommending promulgation of fresh policy in this regard since we are now at the cusp of the next pay commission, the litigation in the form of appeals and reviews pending before the Supreme Court, High Court and various Benches of AFT may be immediately withdrawn by the Ministry of Defence/Services HQ since it is not only unethical but also a burden on the exchequer as well as the litigants since the issue stands long settled by the Supreme Court and is covered by the Government’s own gazette notification. Pending/future cases be conceded on same lines by agreeing to grant of benefits from 01-01-1996 till 30-06-2009 without any restriction of arrears in light of the Gazette notification on the subject.

2.2.6

REQUIREMENT OF 10 MONTHS’ SERVICE IN A PARTICULAR RANK TO EARN THE PENSION OF THAT RANK:

Prior to 1979, pension was calculated on the basis of the emoluments drawn 36 months (3 years) prior to retirement of employees but the said condition was changed to 10 months with effect from 01-04-1979 for both civilian and defence employees. However

this condition of reduction from 36 months to 10 months was made applicable only to those employees retiring after the cut-off date of 01-04-1979 but this cut-off date was struck down by the **Constitution Bench of the Supreme Court in the celebrated DS Nakara's case** which held that all employees irrespective of the date of retirement would be granted the benefit of the 10 months' formula but with financial effect from the said cut-off date of 01-04-1979. The Supreme Court hence had held that the reduction from the 36 months' system to 10 months' system was applicable to all pensioners irrespective of the date of retirement.

In 2001, a letter was issued to the effect that pension for pre-5th Central Pay Commission retirees would not be based less than the 50% of minimum of post-pay commission scales without any reference to the length of service in the said grade/rank. However, this was not beneficial to ranks other than Commissioned Officers in the defence services since their pension was not calculated on the minimum of pay scale but on the maximum.

The 6th CPC, w.e.f 01-01-2006 then totally abrogated the requirement of the 10 months' formula and provided that pension shall be calculated on the basis of 50% of the emoluments last drawn (or 10 months if more beneficial) unlike the position earlier where service of 10 months in a particular rank was required to earn the pension of that rank. The same was made applicable to both pre and post-2006 retirees by the Government. The same was also made applicable to all ranks of the defence services which becomes clear from a bare perusal of Note 1 under **Table annexed as Annexure III** of the Ministry's letter dated 11-11-2008 (**Annexure-17**) which referred to the protection of pension as per the rank last held and not as per the rank last pensioned based on the earlier applicable 10 months criterion.

The pension calculation system for ranks other than Commissioned officers however had a major anomaly in the calculation formula. Prior to the 6th CPC, the pensions of Personnel Below Officer Rank (PBOR) were calculated on the basis of the maximum of the pay-scales which was different than the system followed for all civilian employees as well as commissioned officers of the defence services for whom the pension was calculated on the basis of the minimum of pay scales. Accordingly, again to provide an

edge to PBOR as was the case till 6th CPC, the Government constituted a committee under the Cabinet Secretary who opined that the pension of pre-2006 retirees should be calculated based on the notional maximum within the new 6th CPC scales corresponding to the maximum of pre-6th CPC (5th CPC) scales as per the 6th CPC switch-over fitment tables thereby extending the edge granted to PBOR which was applicable to them earlier. This new stipulation was made applicable with financial effect from 01-07-2009. The said report was accepted by the Cabinet.

However, when the DESW of the Ministry of Defence issued the implementation letter, they on their own again added a line re-introducing the 10 months stipulation back into the pensionary provisions for pre-2006 retirees vide Para 2 of their letter dated 08-03-2010 (**Para 2 of Annexure-18**) which in reality now stood abrogated for pre-2006 as well as post-2006 retirees after the 6th CPC. Meaning thereby, that if a Naib Subedar had served only for 6 months in that rank prior to retirement, he would be granted the pension of a Havildar, and not of a Naib Subedar. **The serious part of this however remains that there was no direction of the reintroduction of the regressive 10 months' criterion by the Committee of Secretaries and it is also understood that even the notings sent to the Cabinet for approval of the Committee's recommendations contained no such stipulation but still the said line was added with a detrimental effect in the final Govt letter without any reference to the Committee of Secretaries or to the Cabinet, which itself is a grave mischief in an elected democracy, even though it has been defended on flimsy grounds.** Another aspect of this controversy was that while individuals were paid on the basis of rank last held from 01-01-2006 till 30-06-2009, they were again reverted back to the 10 months stipulation from 01-07-2009. For example, again to take the example cited above, the said person would receive the pension of a Naib Subedar from 01-01-2006 till 30-06-2009 and then again fall down to the pension of a Havildar from 01-07-2009 onwards, which is an absurd proposition unnecessarily being defended by the Ministry.

Many cases came to be heard by the AFT on this issue and allowed and have been later upheld by the Supreme Court, the latest being **Civil Appeal D No 16721/2015 Union of India Vs JWO RP Krishna Rao**. However, the Ministry continues to file

appeals on the subject fully knowing that the 10 months' stipulation contained in instructions issued by the Ministry has no legal backing or approval of the Cabinet.

Since this issue has led to, and is leading to multiple litigation in Courts, the Committee recommends that no appeals be filed before the Supreme Court on the 10 months' stipulation since not only is the issue covered by the Constitution Bench decision of the Supreme Court in *DS Nakara's* case but also the stand taken against the proposition defies all logic since such personnel are being forced to accept pension of a lower rank than the one in which they had retired and that too by impishly reintroducing a negative stipulation without the sanction of the Cabinet, which anyway stands abrogated with effect from 01-01-2006. In future, it may be taken care to grant pensions based on the rank last held, as is the case on the civil side, and not based on the last rank held for 10 months.

2.2.7

CATEGORIES OF PENSION INTRODUCED BY THE 5TH CPC EXTENDED TO POST-1996 AS WELL AS PRE-1996 RETIREES ON THE CIVIL SIDE BUT INAPPROPRIATELY ONLY TO POST-1996 RETIREES ON THE MILITARY SIDE:

The 5th CPC had introduced certain new categories and enhanced the existing casualty pensionary awards (disability pension, war injury awards, broad-banding of disability element, liberalized family pension etc) popularly known as Categories B, C, D & E w.e.f 01-01-1996. These were extended only to post-96 retirees vide a Govt of India letter for civil pensioners issued on 03-02-2000 (**Annexure-19**). The same stipulations were later extended to post-96 defence pensioners by the MoD vide a letter dated 31-01-2001 (**Annexure-12**) with a cut-off date of 01-01-1996 making it applicable only to post-1996 retirees just like the civil side. **Later, the benefits were extended by the Govt of India (Department of Pension & Pensioners' Welfare- DoPPW) to pre-96 pensioners also vide another letter issued on 11-09-2001 (Annexure-20) thereby extending the said categories (B,C,D,E) to pre-1996 pensioners also, and a copy of that letter was sent to MoD for implementation. The MoD however sat on the letter and never issued similar instructions for defence pensioners.** Hence all categories and formulae of enhanced pension introduced for post-1996 retirees were extended to pre-

96 retirees on the civil side just the next year after the issuance of the initial letter however till date the MoD has not taken action on the same and military pensioners who were released prior to 1996 have been denied the same benefits, especially of Categories C, D and E of Paragraph 4. It was again the DoPPW which in 2010 reminded the MoD about the fact of extension of the said benefits to pre-1996 retirees on the subject of broad-banding vide **Annexure-21** dated 10-08-2010 and it was finally on 15-09-2014 vide **Annexure-22** that the benefits of the letter on the civil side issued on 11-09-2001 were extended to military retirees 13 years later than civilians but that too only restricted to the concept of broad-banding while all other entitled benefits were left out. Corrective measures were not taken by the DESW even after a direct judgement on this point by the Supreme Court in **Civil Appeal 5591/2006 KJS Buttar Vs Union of India** decided on 31-03-2011 (**Annexure-23**). A similar issue of non grant of liberalized family pension introduced in 1984 for deaths in battle inoculation/training exercises to pre-1984 deaths had been agreed upon by the then Secretary ESW in his meeting with the then Adjutant General of the Indian Army but ultimately never saw the light of the day (See Para 4(f) of minutes of meeting of Secretary ESW and AG held on 06-02-2012).

The committee hence recommends that the provisions of the letter dated 11-09-2001 (Annexure-20) issued by the DoPPW on the civil side whereby the benefits of the new categories of enhanced disability/liberalized pension and family pension for post-1996 retirees were extended to pre-1996 retirees also may be extended to military pensioners *mutatis mutandis* by extending the principles of MoD letter dated 31-01-2001 (issued by MoD only for post-1996 retirees) to pre-1996 retirees on the lines of the DoPPW letter dated 11-09-2001. This issue has also been deliberated and adjudicated upon by the Hon'ble Supreme Court already in *KJS Buttar's* case (supra). It would be discriminatory to treat civilian and defence retirees differently when the Categories mentioned in all of the letters above emanate from a common recommendation of the same pay commission.

2.2.8

WAR INJURY PENSION TO WORLD WAR II RETIREES DISABLED IN WWII:

Currently, World War II retirees who were disabled in WWII are not being paid War Injury Pension and are only being paid regular disability pension. Similarly, war widows of those whom we lost in WWII are not being paid Liberalized awards. Ostensibly this is being done since the initial Govt of India letter for war injury awards only covered post-independence conflicts. The stipulation even later was not extended to WWII retirees on the strange pretext that they were not fighting for India but for the British Crown.

There is no such prohibitory stipulation for civilian employees injured in WWII since all civil pre-96 retirees are covered under the clause of 'international wars' under Category E of DoPPW letter dated 11-09-2001 (**Annexure-20**) with financial effect from 01-01-1996. **Even otherwise, such discrimination between war disabled/deceased soldiers of WWII vis-a-vis other wars is unacceptable since the fact remains that both categories have been injured or have died in proper action and India had taken full responsibility at the time of independence for all those who had served in the pre-independence Army.**

The Committee notes with concern such discrimination and that too with a class of pensioners/family pensioners who stood against all odds for a war against humanity and that too at a time when fighting in foreign lands was taboo and who are now numerically placed on a sharp diminishing scale. It is hence strongly recommended that immediate measures be initiated to release war injury pension and liberalized family pension with financial effect from 01-01-1996 respectively to all those disabled retirees of WWII who are in receipt of disability pension and widows of personnel deceased in WWII who are in receipt of family pension.

2.2.9

CONDONATION OF SERVICE FOR SECOND SERVICE PENSION FOR DSC PERSONNEL:

Pension Regulations of the three services provide for condonation of service till 6 months for grant of pension. The period has further been extended to 1 year by way of a Government Letter issued on 14-08-2001 (Para 1(a)(v) of **Annexure-24**).

Personnel joining the Defence Security Corps (DSC) after retiring from the regular Defence Services have two options in matters of pension. Such personnel can either add their former service into their DSC service and take one pension for combined total length of service **OR** they can opt for their normal pension from their former regular service and start afresh in the DSC where they are entitled to second pension if they separately complete 15 years in the latter. In the second type of cases, the service in DSC is totally divorced from the former service and actually the term 'second' pension is a misnomer since it simply is an independent pension earned from their second spell of service without any connection with their former service.

Many personnel fortuitously miss out on their second pension from DSC by a few months on retiring just prior to completion of 15 years in DSC. This is in stark contrast with those personnel who join civil appointments rather than the DSC where they are eligible for pension after 10 years of service on the civil side whereas if they join the DSC they are not eligible for the same even if they complete much above 14 years in the DSC.

Since such personnel with more than 14 and less than 15 years of service were eligible for condonation of service up to 1 year, many of them applied for the same but their cases were rejected based on an old letter issued by the AG's Branch of the Army in 1962 further based on a UO of the MoD stating that condonation would not apply to "second pension" cases. This seemed quite absurd since there is no such prohibition in the Regulations (eg, Regulation 125 of Pension Regulations of the Army, 1961) or even in the master MoD letter of 14-08-2001. As expected, Hon'ble Courts read down and disagreed with such a disabling provision introduced by the Services HQ/MoD and held that there was no such prohibition under the rules and hence condonation could not be denied to "second" pension cases. The same was held in multiple cases including by

the Punjab & Haryana High Court in LPA 755/2010 **Union of India Vs Mani Ram** decided on 05-07-2010, the Delhi High Court in **Ex-Sep Madan Singh Vs Union of India** decided on 31-08-2006 and also various Benches of the AFT.

Accordingly, accepting such a legal position, a letter was correctly issued by the Army HQ to all concerned to concede all such cases pending before various Courts after due approval and discussion with the then Secretary ESW.

However, strangely, the MoD in 2012 took out another letter re-iterating the earlier position and stating that since the idea of condonation is to grant financial benefits to those who are not in receipt of the same, condonation may not be granted for second pension.

The Committee recommends the following on the issue:

(a) The Committee notes with concern that such a stand denying condonation of service for second pension is not only obdurate but also contemptuous since once an issue is decided by a Constitutional Court and accepted as such for many personnel and also the impugned letter read down or struck down by judicial interpretation, the DESW could not have issued another similar letter in 2012 with similar contentions to revalidate or negatively resuscitate a judicially settled issue. If such a stand were to be accepted, then even after impugned letters or provisions are read down, interpreted or struck down, various departments of the Government would simply issue them again with a different date to revalidate their actions, something which is not acceptable in a democracy which has the rule of law as its hallmark.

(b) Even otherwise the reasons to deny such condonation cannot be invented when no such prohibition or reasons exist in the master regulations or letters of the Government, moreover when the second service by those DSC personnel who have not opted to add their former service in their DSC service is totally separate and divorced from their earlier service with no connection whatsoever with their former service or financial situation. Defence personnel who are joining the DSC cannot be placed at a disadvantage than their peers joining civil Government organisations who become eligible for pension after 10 years.

(c) All appeals filed on the subject or in the pipeline may be withdrawn. The fresh letter issued by the DESW in the year 2012 merely reiterating the earlier letter of 1962 hence also needs to be withdrawn or directed to be ignored and *status quo ante* as accepted by judgements (supra) needs to be accepted since now it is the law of the land. Matters be conceded on a case to case basis, as was the practice earlier.

2.2.10

BROAD-BANDING OF DISABILITY PERCENTAGES FOR THE COMPUTATION OF DISABILITY ELEMENT AND WAR INJURY ELEMENT:

Disability pension is granted to those individuals who are invalided/ released/ discharged/ superannuated/ retired with a disability accepted as attributable to or aggravated by service conditions. Disability pension consists of two elements – service element and disability element. While service element is granted to all individuals with a disability irrespective of length of service, disability element is granted for the percentage of functional disability suffered. Personnel who are released with less than pensionable length of service are granted service element as per the minimum pension admissible on completing full pensionable length of service. Service element therefore compensates a person for the curtailment of his/her tenure while disability element relates to the functional disability. Defence pensionary rules (unlike civil pension rules) further clearly provide that all those persons who are in low medical category at the time of release shall be treated as “invalided from service” for the purposes of disability pension (Rule 1 of Entitlement Rules, 1950, Rule 4 of Entitlement Rules, 1982). All types of low medical personnel, irrespective of manner of exit, face a medical board at the time of release and hence are “boarded out” in that sense.

The Fifth Central Pay Commission introduced the concept of broad-banding to minimize medical subjectivity and mistakes & disagreements of medical boards and to overcome the rigid mathematical calculation of disability. This was to eliminate the problem of award of varied percentages for similar disabilities for different people by different medical boards at the time of release. It was recommended that those with a disability below 50% would be granted a disability element by treating it as 50%, those with 50%-75% would be granted the benefit of 75% for the purposes of computation and those with above 76% would be granted the benefit of 100% disability element. This was akin to the system of Grades instead of Marks in the arena of education. However while implementing the concept of broad-banding w.e.f 1996 vide its letter dated 31-01-2001, the MoD granted it only to invalided personnel and not to those disabled personnel who

are released with a disability pension on retirement or on completion of terms, though all categories are equally afflicted with the problem of medical subjectivity. **Due to this skewed policy, for the first time in history, invalided personnel started receiving higher disability element than others. For example, an invalided person released just 1 day prior to normal retirement with 20% disability started getting disability element @ 50% while the person who retired on the normal date a day later with double the functional disability assessed as 40% got a lower disability element @ 40% rates. It also threw up another strange controversy that persons who opted to bravely serve the nation by choosing to continue in service despite disability were now at a disadvantage and were being given a lower disability pension than those who opted to be invalided out on medical grounds or who opted for non-extension of service.** This was ostensibly defended by the Ministry on the pretext that the 5th CPC had granted this benefit only to “boarded out” personnel, forgetting that all low medical categories before being released face a medical “board” and are also treated as “invalided” out as per Entitlement Rules and that the reason behind the concept as propounded by the 5th CPC itself was to offset the “mistakes and disagreements” of medical boards which equally applied to all disabled personnel. Moreover even if the pay commission recommendations led to any incongruity, it could definitely be corrected by the Government itself or even by Courts as held by the Supreme Court in **State of UP Vs UP Sales Tax Officers Grade II Association 2003 AIR (SC) 2305** wherein it was ruled that judicial review could be exercised over implementation of pay commission recommendations by the Government.

A retired officer (Lt Col PK Kapur) sought judicial remedy and challenged the non-grant of broad-banding till the Supreme Court. The Supreme Court was unfortunately wrongly informed that broad-banding had been introduced to compensate the shortening of tenure of invalided personnel and that in accordance with a Govt (DoPPW) letter issued on 03-02-2000 it was only applicable to post-1996 retirees. **The Ministry however did not inform the Court that the 03-02-2000 letter had already been extended to pre-1996 retirees w.e.f 01-01-1996 vide a separate letter issued on 11-09-2001 (Annexure-20)** and that broad-banding was not to cater for shortening of tenure but to

offset medical subjectivity of medical boards which equally applied to all disabled personnel. It was also not informed that there was a separate element called 'service element' that was granted to invalided personnel to compensate for shortened service and this was distinct from 'disability element'. The Officer/Petitioner could not rebut the argument since he was appearing in person without a lawyer and he ultimately lost the case and the case was decided in favour of Ministry. However in a landmark case filed by war-disabled ex-Army Vice Chief Lt Gen Vijay Oberoi, the Chandigarh Bench of AFT allowed broad-banding benefits to all disabled personnel who were in receipt of disability pension. The AFT also distinguished PK Kapur's judgement of the Supreme Court and ruled out that the relevant rules and reasons behind broad-banding were not pointed out to the Supreme Court and that the MoD also did not bring to the notice of the Court the various letters and provisions on the subject and hence the judgement was 'sub-silentio'. The Supreme Court heard another similar case (**Capt KJS Buttar Vs Union of India**, Civil Appeal 5591/2006 allowed on 31-03-2011) and this time the relevant rules and provisions were pointed out to the Apex Court and the Supreme Court resultantly changed its earlier view and ruled against the MoD and decided that the broad-banding benefits were to be provided to all disabled personnel, not just to those who were invalided out and that pre-1996 retirees were also entitled to the same. Similar order was passed by the SC in yet another case in 04-04-2011 (**Union of India Vs Paramjit Singh**, Special Leave to Appeal (Civil) CC 5450-5451/2011) against the MoD.

In August 2011, the Army HQ and the Chief of Army Staff directed that no further appeals were to be filed in such cases and the judgements of the Supreme Court and the AFT were to be implemented in favour of disabled personnel. However the DESW still insisted on filing further appeals and review petitions in the Supreme Court against AFT and Supreme Court decisions by overruling the Army HQ & COAS and by ignoring latest Supreme Court decisions. The Army HQ protested but to no avail.

Despite the fact that the issue was now settled, the DESW continued filing appeals in similar cases which ultimately reached a number close to 1000. The DESW also filed a Review Petition in *Capt Buttar's* case which was dismissed on 21-01-2014 thereby settling the issue once and for all, still however, the DESW continued filing appeals.

On 10-12-2014, more than 800 appeals on the subject were dismissed by a Three Judge Bench of the Supreme Court in **Civil Appeal 418/2012 Union of India Vs Ram Avtar** where the applicability of MoD letter dated 31-01-2001 (which takes financial effect from 01-01-1996) was adjudicated. It may be recalled that the impugned part of the said letter (Para 8.2) containing the prohibitory stipulation already stands quashed and upheld as such by the Supreme Court. Despite the dismissal, still a universal policy has not been issued by the DESW and personnel are still being forced to litigate for benefits. Elements of the establishment have also not yet gracefully come to terms to the fact that the case has been finally settled by the Supreme Court and that their personal opinions are of no avail now. All three Services HQ have also vouched for grant of the said benefits with financial effect from 01-01-1996.

The Committee recommends that the principle of broadbanding of disability percentages, irrespective of the manner of exit, be extended to all disability pensioners of the defence services as already settled by the Hon'ble Three Judge Bench of the Supreme Court in Civil Appeal 418/2012 Union of India Vs Ram Avtar decided on 10-12-2014, with financial effect from 01-01-1996 or date of release from service or date of grant of disability/war injury pension, whichever is later. Till the time such policy is issued, Government lawyers should be strictly instructed to concede such cases in Courts since continuance of defence of such cases in view of the settled position is not only contemptuous but is also resulting to a loss of both the exchequer/Union of India as well as litigants. Appeals, if pending, may be immediately withdrawn.

2.2.11

NON GRANT OF SERVICE ELEMENT OF DISABILITY PENSION TO DISABLED PERSONNEL WITH LESS THAN MINIMUM QUALIFYING SERVICE WHO ARE RELEASED FROM SERVICE OTHER THAN BY WAY OF INVALIDATION:

This negative interpretation of long existing pensionary rules, is a recent phenomenon. Unlike on the civil side, disability pension in the defence services is granted not only to those who are invalided (prematurely boarded out on medical grounds) from service, but also to those who are in a low medical category at the time of release.

Pension Regulation 173 (for PBOR) as well as Regulation 48 (For Commissioned Officers) of the Pension Regulations for the Army, 1961 and corresponding regulations for the other two services clearly provide that in case a person is invalided out of service, he/she shall be entitled to **disability pension**. Further, as is commonly known, disability pension consists of two elements, that is, service element and disability element (See Regulation 180 of Pension Regulations, 1961). While disability element caters to the functional disability of a person, service element caters to the length of service rendered by a person, in fact, service element is simply an element of service pension proportionately reduced as per length of service in all those cases where a person does not have to his/her credit the minimum qualifying service for earning the regular service pension. With effect from 01 Jan 1973, there is no minimum qualifying service required for grant of 'service element' and the said position has also been accepted by the Ministry before the Supreme Court. Further, Regulation 183 of the Regulations ordains as to how service element is to be calculated, that is, for those who have rendered minimum qualifying service for pension and then for those who have not rendered minimum qualifying service for pension. Meaning thereby, that service element is admissible to both categories- those who have to their credit minimum qualifying service and those who do not. We are again not taking cognizance of Pension Regulations 2008 issued by the Ministry since these have not been issued by following the due legal process the reasons for which are fully discussed elsewhere in this Report.

Rule 1 of the Entitlement Rules, 1950 and Rule 4 of Entitlement Rules, 1982, make it clear that 'invalidation' is a requirement for grant of disability pension and that any person who is in a lower medical category than the one he/she was recruited in, shall be treated as invalided out for the purposes of disability pension. The said aspect already stands adjudicated by the Supreme Court in **SLP 24171/2004 Union of India Vs Mahavir Singh Narwal** decided on 08-01-2008 thereby affirming the decision dated 05-05-2004 of the Delhi High Court in CW 2967/1989 **Mahavir Singh Narwal Vs Union of India**.

Of late, there has been an interpretation in vogue that personnel who have not been 'invalided' are not eligible for service element of disability pension. Even voluntary

retirees are only being released the 'disability element' without the 'service element' by citing the Ministry's Letter dated 29-09-2009 (**Annexure-25**) in which strangely the term used is 'disability element' and not 'disability pension'. It is yet another matter of concern that the pay commission recommendation which the above letter purportedly implements contains the correct term 'disability pension' and not 'disability element'. How the said terminology got changed while issuing the letter still remains a mystery to which no answers are forthcoming. In one recent such cases allowed by the AFT, the Ministry has already approached the Supreme Court but the Civil Appeal stands dismissed (**Civil Appeal Diary No 8362/2015 Union of India Vs Satpal Singh dismissed on 30-03-2015**).

This interpretation by the Ministry of releasing only the disability element to personnel who are not 'invalidated out' hence is faulty on the following grounds:

- Disability Pension consists of two elements- service element and disability element, and there is no concept of disability pension without the service element. Rule 1 of the Entitlement Rules, 1950 and Rule 4 of Entitlement Rules, 1982, make it clear that 'invalidation' is a requirement for grant of **disability pension** and that any person who is in a lower medical category than the one he/she was recruited in, shall be treated as invalidated out for the purposes of disability pension. This interpretation of the definition of 'invalidation' and grant of disability pension (which of course includes service element) to personnel who seek retirement on compassionate grounds, already stands solidified in ***Mahavir Narwal's*** case (supra) as affirmed by the Supreme Court.
- The minimum qualifying service required for earning a service element was abrogated w.e.f 01 Jan 1973, and this fact has been conceded by the Ministry even before the Supreme Court. The admissibility of service element was also adjudicated upon by the Delhi High Court earlier in **CW 6475/1998 Jai Singh Vs Union of India decided on 07-03-2005 (Annexure-26)** for cases other than invalidation.
- Service element is nothing but the element of service pension proportionately reduced as per length of service of personnel who have not completed minimum

qualifying service, subject to a minimum of Rs 3500/- as on date, and hence it makes no logic to hold it back for those who have suffered a disability which is attributable to/aggravated by military service but have been released on completion of terms or on own request.

- When service element is authorized even to Short Service and Emergency Commissioned Officers with 5 years (or even lesser) of service vide the Ministry's letter dated 30-08-2006 (**Annexure-27**), it cannot be denied to others, including permanent commissioned officers, with less than minimum qualifying service for regular service/retiring pension.

The Committee, in view of the foregoing, recommends that Service Element be released to all those individuals who are released with an attributable/aggravated disability, irrespective of the manner of exit/release from service since there is no minimum qualifying service required for earning this element. All appeals filed on the subject may be immediately withdrawn.

2.2.12

DUAL FAMILY PENSION TO MILITARY WIDOWS WHO ARE DRAWING PENSION FROM A CONTRIBUTORY OR NON-GOVERNMENT SOURCE OR FUND OR TRUST FROM THE CIVIL SIDE, FROM THE DATE OF DEMISE OF THE MILITARY PENSIONERS, RATHER THAN 24-09-2012:

Vide Govt of India, Ministry of Defence Letter dated 17-01-2013 (**Annexure-28**), military widows of military pensioners who had earned pension from the defence services as well as Civil Government service, are entitled to dual family pension from both sources with arrears from 24-09-2012.

Earlier, though a military pensioner who had completed pensionable service in a civil pensionable organisation was entitled to two pensions from both sources, his family was only eligible for one pension. The same also applied to those military pensioners who died in harness in a civil organization.

However, there was an exception to the above rule. Vide letter No. 11/3(1)97/KD/ Double Pension dated 15-01-2002, issued by Employees' Provident Fund Organisation (**Annexure-29**), the widows of military pensioners who had earned their second pension under the Pension Schemes of 1971 or 1995 were eligible for both pensions based on the very valid logic that the source of such pension was not the coffers of the Government but a fund created specially in this regard which was contributory in nature. In other words, it was essentially the person's own contribution that was being returned to his family in the form of pension and there was no burden on the Government.

On the same logic, Courts and Tribunals had held that families of military pensioners who had earned their second pension from a non-government source such as a contributory fund or special fund or a trust, such as those applicable to pension schemes of banks and insurance corporations, would be entitled to dual pension from the date of death of the pensioner himself in terms of the spirit of the letter above issued by EPFO (**Annexure-29**). Hence, while Gol/MoD Letter dated 17-01-2013 came much later, the letter dated 15-01-2002 was already in force.

Many decisions were rendered in this regard including by the Kerala High Court in WP 22963/2007 **Leela Vs Union of India** which was later affirmed by the Supreme Court in SLP CC 11538/20098 **Union of India Vs Leela**. A similar decision was also rendered recently by the AFT in **OA 116/2012 Veena Pant Vs Union of India** decided on 31-10-2012 which has also been affirmed by the **Supreme Court** in **Civil Appeal D 22349/2013 Union of India Vs Veena Pant** on 01-08-2014.

It is observed that despite settled legal position that has attained finality, the affected widows are being forced to litigate on the same point time and again.

The Committee hence recommends that while the benefits of double family pension may be restricted w.e.f 24-09-2012 in terms of Gol/MoD Letter dated 17-01-2013 for family pensioners earning their second pension from a purely Government source, the same may be released from the date of death of the pensioner in all cases where the pension from the civil side is from a non-government fund or contributory fund or any other pension trust or source as already interpreted by Courts and Tribunals and upheld as such by the Supreme Court in *Leela's* case and *Veena Pant's* case (supra). All such cases pending before Courts or arising in the future may be directed to be conceded and pending appeals withdrawn.

2.2.13

RESERVIST PENSION TO RESERVISTS RELEASED FROM SERVICE COMPULSORILY PRIOR TO COMPLETION OF PENSIONABLE COLOUR + RESERVE SERVICE:

Prior to coming into force of the current system of recruitment of full physical terms of engagement, personnel of the defence services were recruited as per the Colour + Reserve scheme. After completion of combined Colour and Reserve Service of 15 years, such individuals were entitled to "Reservist Pension". For example, in the Air Force, individuals were recruited under the 9 + 6 system wherein they were meant to serve for 9 years in colours (physical service) and then 6 years in reserve wherein they could indulge in any vocation of their choice but were liable for a call-out on mobilization in an emergency.

Due to service constraints of those times, many of such individuals were released in large numbers with gratuity after completion of their colour service but prior to completion of the terms of their reserve service thereby resulting in denial of "Reservist Pension" to them.

This led to a spate of litigation wherein it was held by Courts and Tribunals that based on the principles of *promissory estoppel*, such individuals could not be denied the benefit of 'Reservist Pension' since they were unilaterally released without letting them complete their service as was promised at the time of recruitment.

Many of such cases have attained finality including an appeal filed by an affected reservist whose case was initially dismissed by the AFT, that is, **Civil Appeal 4787/2012 Cpl Baldev Singh Vs Union of India** decided on 06-01-2015 wherein the Supreme Court had held the affected reservist entitled to reservist pension with a restriction of financial benefits for three years prior to filing of the petition.

No policy decision has been taken by the Ministry till date on the subject despite a positive proposal to the effect by the Air HQ.

The Committee hence recommends that the decision as rendered by the Supreme Court in *Baldev Singh's case* (supra) be implemented in the same terms and all such similarly placed affected personnel be released "Reservist Pension". All pending and future cases in Courts and Tribunals be conceded and all appeals be withdrawn.

2.2.14

DENIAL OF PENSIONARY AND OTHER BENEFITS TO FAMILIES OF MISSING/MISSING PRESUMED DEAD SOLDIERS AS PER POLICY BY INCORRECTLY BRANDING THEM AS DESERTERS:

There have been multiple instances wherein soldiers, sailors and airmen have genuinely gone missing and their whereabouts are unknown to the family as well as the organization.

Unfortunately, it is observed that whenever a person is absent without leave or overstays leave, the establishment, after following the regular procedure including issuance of "Apprehension Roll" declares such persons as "deserters" and then such personnel are dismissed from service in an ex-parte manner after 10 or 3 years depending upon whether the person went missing from a field or peace area.

Needless to state, common sense, as also the rules require that a person can only be declared a 'deserter' if there is any hint of any intention of desertion and if a person is keeping himself away from service willfully and not in cases where a person is missing for reasons that are unknown or beyond anybody's control. Naturally if a person is unheard of and is not apprehended or his whereabouts remain unknown, then he's to be declared as 'missing' and not a 'deserter'. Though this is clearly provided in various service instructions, it is seldom followed. For example, in case of the Army, the following lines of Army Order 01/2003 provide the procedure in such situations:-

ARMY ORDER 01 OF 2003

58. Army personnel may be found missing when there are no operations/hostilities. **Great care must be exercised in dealing with such cases. They would be reported as deserters only after conclusive evidence is obtained.** A few examples are cited below :-

* * *

Rules for Reporting Personnel Missing :-

59. Following instructions will be observed whilst reporting personnel as missing :-

(a) A person will be regarded as missing with effect from the day following on which he was last seen.

(b) A "missing" casualty will not be reported until 72 hours from the date he was missing i.e. 96 hours after he was seen, e.g. a man last seen on 17 Nov. will be reported on 21 Nov as missing with effect from 18 Nov.

The policy of the Government of India on the subject, first issued in 1988 (**Annexure-30**) and amended from time to time, including in 2015, itself clearly provides the answer on how to release such benefits and states that service and pensionary benefits are to be released to families of personnel whose whereabouts are not known. Earlier Government departments used to wait for 7 years for presumption of death and then used to release the arrears after the lapse of 7 years but in 1988 the Govt issued the policy as above that some benefits would be released immediately on declaration of disappearance and some other service benefits would be released after one year of declaration of disappearance **after lodging a "missing report" with the police.** The time period of one year was further brought down. Still however, the Services are not attuned to the fact that there is a difference between a person who is really a 'deserter' and the one who is 'missing'. Many families of missing personnel are denied benefits and pension on the account of their husbands being deserters or having been dismissed after being declared deserters.

The Courts have time and again deprecated how families of missing soldiers have been denied benefits and how such soldiers are declared deserters rather than missing and then dismissed in an ex-parte manner rather than releasing the due benefits to families.

In fact, the Courts, including the Supreme Court have held such families entitled to full benefits from the date of issuance of apprehension roll and not from the date of lodging of police report since the date of first information to the police is naturally the time when the apprehension roll is issued. Amongst others, the same was also held in **Hon'ble Supreme Court** in **Uma Devi Vs Union of India, Writ Petition (Criminal) 125-126 of 2002** dated 20-07-2011 (**Annexure-31**) and **Hon'ble Rajasthan High Court** in **Phoola Devi Vs Union of India, CWP 6620 of 1997** allowed on 07-12-2006 (**Annexure-32**)

It is however seen that applications of missing personnel are not being accepted or properly processed by the Record Offices (except in the case of the Indian Air Force) who simply reply back to claimants that the person had been declared as deserter and then dismissed, rather than following the procedure of converting the entry of 'deserter' into 'missing'. The only proper application of mind being shown in this case is by the Air Force which has floated detailed instructions in this regard.

Of course, the thumb rule in this regard is that if the police of the person's hometown declares after due enquiry that he is not traceable, then naturally the deduction to be arrived at is that the person is missing (and not willfully deserting) unless there is concrete evidence of some fact which proves otherwise, such as the fact that the person had run away to abscond from the process of law or a criminal case on the civil side or a Court Martial etc. In any case, according to policy, the family of such missing personnel has to submit indemnity bonds wherein it is clearly stated that the amount would be realized back in case of any wrong declaration.

Since most such cases are from the Army, we are happy to note that from the Army's side, the AG's Branch has empathetically stated that no injustice would be caused in such genuine cases and a Court of Inquiry could be held to convert the entry of desertion into missing/missing presumed dead. This correct procedure, as also articulated by the AG's Branch is however not being followed by most Record Offices which are simply rejecting claims of families of missing or missing presume dead personnel on the pretext of 'desertion'. In fact, such petitions, when filed in the Courts are also being opposed by default rather than making genuine queries from the Police or obtaining Police reports to further resolve such cases. Some cases are also

unnecessarily being rejected on technical errors such as mentioning of wrong dates of having gone “Missing” in police reports or applications forms or affidavits made by affected families. Rather than such technicalities, the focus should be on the fact whether the police has endorsed that the person is missing or not.

In view of the above, we hereby recommend that as stated by the AG’s Branch (MP 8), on receipt of any such representation or Court Case, the Records Offices be directed to process the cases of missing personnel for grant of pension after completing due formalities including the most important requirement of a ‘Police Report’ after converting the entries of desertion into missing/missing presumed dead in such genuine cases by holding a Court of Inquiry if required. No such case be rejected at the outset by the Records Office without processing it in accordance with policy.

2.2.15

NON ACCEPTANCE OF DECLARATION OF BATTLE CASUALTY AND NON-GRANT OF WAR-INJURY OR LIBERALIZED BENEFITS TO CASUALTIES IN OPERATIONAL AREAS:

The term ‘Battle Casualty’ is a misnomer since it not only encompasses disabilities and deaths in proper battles but also in operational areas under various circumstances. It is seen that the concept of ‘**Battle Casualty**’ is being misinterpreted and misunderstood by the Defence Accounts Department and at times also by the Services HQ and the same is being confused with the concept of ‘*war injury pension*’ as granted under pensionary provisions. Many deserving cases are not being declared ‘Battle Casualty’ on the pretext that they do not fall under Category D or E of Para 4.1 of Govt of India, Ministry of Defence Letter No 1(2) /97/D (Pen-C) dated 31-01-2001 (**Annexure-12**). At the outset, it becomes important to state here that the *ibid* letter dated 31-01-2001 does not deal with the subject of ‘Battle Casualty’ and is simply a letter determining the various kinds of pensionary awards introduced after the 5th Central Pay Commission including disability and war injury pension and that too only for post-1996 retirees. The

said letter neither lays down nor purports to lay down classification of 'battle casualty' and is merely limited to the circumstances which lead to grant of various kinds of pensions including war injury pension. **The letter does not even contain any direct or indirect reference to the terminology of 'battle casualty'**. While 'battle casualty' status leads to various benefits including facilities and benefits by the Services HQ, the Central and the State Governments and other organizations, and also relates to certain aspects of cadre management and posting profiles, the letter dated 31 Jan 2001 on the other hand is only restricted to types of pensionary awards. While 'war injury pension' and 'liberalized family pension' were introduced only in the year 1972, the concept of 'battle casualty' has existed in the defence services even prior to that.

In case of the Army, for example, for the first time after independence, the concept of Battle Casualty was codified vide Special Army Order (SAO) 11/S/1965. The said order was later amended vide SAO 8/S/1985 and then vide AO 1/2003 which is applicable as on date. All the above Army Orders basically signify that casualties occurring in operations or in operational areas are to be categorized as Battle Casualties. The concept is not just related to injury or death in war but includes many other circumstances too such as natural illnesses while operating near the border or line of control, casualties during flood relief & earthquakes, unintentional killings by own troops etc. As explained above, 'battle casualty' status brings with it various benefits and privileges such as monetary grants by State Governments and even local bodies and NGOs. It has no direct correlation with pension as perceived by some, and both are mutually exclusive, though they may overlap at places.

While battle casualty status is defined by various orders defined above, the concept of war injury pension (earlier called war injury pay) and liberalized family pension (earlier called special liberalized family pension) on injury or death in proper operations respectively, was for the first time introduced through Govt of India, MoD Letter No 200847 / Pen-C / 72 dated 24 Feb 1972. It hence may be noted that 'battle casualty' status vide SAO 11/S/1965 pre-dates the concept of war-injury or liberalized family pension first introduced in 1972. After the 4th CPC, the Govt vide Part IV of Govt of India MoD Letter No 1(5)87/D (Pensions/Services) dated 30 Oct 1987 provided for war injury and liberalized family pension for all 'Battle Casualty' cases and hence the two concepts

converged for this aspect. Hence all Battle Casualties were also made eligible for war-injury and liberalized family pension awards besides other facilities, privileges and benefits. **The concept of war-injury and liberalized family pension was further liberalized after the 5th CPC vide Govt of India letter dated 31-01-2001 when 5 categories for pensionary benefits were introduced and Categories D and E of Para 4.1 laid down the sub-categories which entitled a person for war-injury pension (on disability) and liberalized family pension (on death) vide Paras 6.1, 10 and 11 of the same letter. This Category E inter alia contains references to enemy action, accidental explosions, war like situations etc but most importantly Category E (i) provides that death and disability (not just injury, but any disability) in all notified operations would be covered for war-injury and liberalized family pension. As is well known, notified operations are those which are properly and specially notified by the Govt and which include operations such as OP Rakshak/Rhino/Vijay/Parakram/Meghdoot etc. Further, Note (i) under Para 4.2 of the same letter dated 31 Jan 2001 clearly stipulates that these examples as above are only illustrative and not exhaustive.**

The concepts of 'battle casualty' and 'war injury pension' are mutually exclusive, though overlapping at places, however the Government of India in letter dated 31-01-2001 has not laid down or directed or ordered the Services HQ to declare battle casualties only as per circumstances listed out in the said letter. Moreover, most of the casualties declared as 'Battle Casualty' under the AOs/SAOs anyway fall under Category E (being operational disabilities) of the Govt of India Letter dated 31-01-2001 thereby entitling them to war injury pension.

Though in the past, no problem was being faced in the release of 'war injury pension' or 'liberalized family pension' to operational disabilities or deaths, in the last few years the Defence Accounts Department started refusing such benefits except to those cases who had suffered deaths or disabilities as a result of enemy fire etc in war like engagements. This despite the fact that hundreds of cases have been granted the benefit in the past and sudden discontinuance of such benefits was incongruous and also discriminatory on the face of it. Moreover, if only war like engagements were to be considered eligible for such benefits then all other categories from E(a) to E(i) of the

said letter become redundant and superfluous. It must be appreciated that those posted in operational areas are performing cardinal functions for the nation's defence and are facing the vagaries of nature and also many other dreadful eventualities which cannot be measured or predicted or laid down with a straightjacket formula. A person getting disabled or dying in an operational area of illnesses induced by harsh climatic conditions of such an area or due to an accident while patrolling in such an area is not less important a sacrifice than another dying by a bullet in the same locale. All such individuals posted in operations are an integral part to the success of such operations and the sustenance of such operations.

The proposal of the Man Power Directorate for including further sub-categories in Category E does not merit acceptance simply because by such an action wheels within wheels would be created and rather than simplifying and rationalizing the already misinterpreted issue, we would be further complicating it and would also be giving more excuses and leverage of fishing out artificial distinctions in the categories for denial of benefits. The said Category by its very nature is liberal and broad-based and covers most of the operational disabilities. Further it is qualified by a Note in the same letter that the illustrations are not exhaustive and merely illustrative. The issue is already covered by decisions of Constitutional Courts which are anyway binding on the Ministry and the Services. Some of such decisions are as follows:

- Supreme Court in **Special Leave to Appeal (Civil) CC 19992/2011 Union of India Vs Harjinder Singh** decided on 05-12-2011 wherein the judgement of AFT in **OA 90/2010 Harjinder Singh Vs Union of India** decided on 12-07-2010 was upheld. In this case, the family of a soldier who had died in Operation Meghdoot due to a natural illness was denied Liberalized Family Pension under Category E on the pretext that he had not died in action of an injury. However it was held that death or disability in a notified operation was covered under Category E(i) thereby entitling the person to liberalized family pension.
- Delhi High Court in **WP 4488/2012 Maj Arvind Kumar Vs Union of India** decided on 21-02-2013 wherein the officer was injured in J&K in a notified operational area in a motor vehicle accident and the High Court came to the

conclusion that he was very much entitled to the benefit of war injury pension under Category E since the disability had occurred in a notified operation, that is, Operation Rakshak.

- Delhi High Court in **WP 5262/2003 Manju Tiwari vs Union of India** dated 04-03-2005 wherein the widow of a soldier who had died due to Cardiac failure during Operation Vijay was denied benefits of Category E on the pretext that the death was due to a natural illness but the High Court held that since the death was in a notified operation, the widow was entitled to liberalized family pension by treating the death under Category E(i).
- Supreme Court in **SLP (C) CC 15338/2015 Union of India Vs Sumitra Devi** dated 01-09-2015 wherein the decision of the Punjab & Haryana High Court in CWP 3810/2013 **Sumitra Devi Vs Union of India** dated 17-02-2014 was affirmed in which it was held that the husband of the Petitioner, who had died of a heart attack in an operational area would be entitled to the benefit of Category E(i).

Another flaw that we have noticed in the system of award of war injury and liberalized benefits or declaration of 'battle casualties' is that disabilities and deaths occurring in **Operation Falcon** are not being included for grant of said benefits or declaration of 'battle casualty' status and consequential benefits since the said Operation has not been officially notified ostensibly due to diplomatic reasons. We are constrained to say that such a situation is extremely unfortunate since benefits to similarly placed individuals in parallel *on-ground* situations cannot be held back due to such hyper-technical reasons or lack of paper formalities. In case there is any genuine reason for not notifying the operation, then at least it could be provided that deaths and disabilities in Operation Falcon would be treated as battle casualties for financial purposes but physical casualties for statistical purposes. It may be pointed out here that such a system was in vogue for casualties under SAO 8/S/85 (See Notes 11 and 12 under Para 4 of SAO 8/S/85 added vide corrigendum dated 15-05-1991).

The Committee thus recommends that in terms of the very liberal nature of applicable policy and decisions of Constitutional Courts, the deaths and disabilities arising in notified operations may continue to be granted disability and liberalized pensionary awards without hyper-technically insisting on hairsplitting requirements that do not actually exist in the rules. It is further recommended that the Services HQ may continue awarding 'battle casualty' status to their personnel under their own instructions since the status of 'battle casualty' is not just restricted to pensionary awards but encompasses many other issues such benefits and grants from welfare funds, ex-gratia by States, posting and cadre management etc. The Committee also recommends that all such cases taken up by the Services HQ and pending with the Defence Accounts Department for release of benefits may be cleared within a period of 4 months by intervention of the MoD so as not to prolong the agony of the affected disabled soldiers or the affected military widows and all necessary amendments in service record and pensionary documents be carried out consequently. Deaths and disabilities occurring in Operation Falcon must also be covered under the same terms and conditions as under other notified operations and if need be, the said operation may be declared as equal to other notified operations for financial benefits.

2.3 SPECIFIC POLICIES IN MATTERS CONCERNING RETIRAL AND RELATED BENEFITS REQUIRING REVISION/RELOOK

The Committee has identified the following policies concerning service matters that require revision, relook or a simple change in attitudinal approach:

2.3.1

ILLEGAL DENIAL OF OUTPATIENT MEDICAL FACILITIES BY SERVICE MEDICAL HOSPITALS TO NON-PENSIONER EX-SERVICEMEN DESPITE BEING APPROVED BY THE MINISTRY AND THE ADJUTANT GENERAL'S BRANCH, AND CONSIDERATION OF GRANT OF MODIFIED ECHS FACILITIES TO SSCOs:

While pensioners are entitled to the Ex-Servicemen Health Scheme, non-pensioners falling within the category/definition of 'ex-servicemen' are entitled to outpatient medical

facilities in Military Hospitals (MHs) and reimbursement from Kendriya Sainik Board as per terms and conditions for certain scheduled serious diseases.

This issue is rather disconcerting and emanates from rigidity shown by certain quarters and that too without authority due to which ex-servicemen non-pensioners who were being entertained in military hospitals and some of whom were also holding 'Medical Entitlement Cards' issued by the Services HQ, were suddenly denied the said facilities. As a result, even the schemes floated by the MoD under the aegis of the Kendriya Sainik Board for reimbursement of medical expenses of non-pensioners have been rendered redundant since the first step in the said schemes is to get a referral from a military hospital while military hospitals have started refusing to entertain such affected pensioners since late 2000s who were then left without remedy. It may be recalled that most of the affected ex-servicemen are old retirees including World War II veterans and Emergency Commissioned Officers.

In the year 1966, for the first time out-patient and in-patient medical facilities were introduced for retired defence personnel who were pensioners. In the year 1970 vide **Annexure-33**, the said facilities were extended to non-pensioner ESM provided there was availability of space and facilities. **The facility was not available as a matter of right but as a way of discretion of service medical authorities.**

While the Govt letter of 1970 was retained, in the year, 1997, Army Order 10 of 1997 (AO 10/97) was published wherein it was provided that medical facilities in military hospitals would only be provided to the following categories of personnel:

- (a) Ex-Service Pensioners
- (b) Families of Ex-Service Pensioners
- (c) Families of deceased personnel drawing pension of some kind

This did not grant any benefit to those ESM such as ECOs and SSCOs and PBOR who enjoyed the status of ESM but were not pensioners. However, to make the already existing provision of 1970 more effective and to include non-pensioners who were otherwise granted the status of 'ESM', an amendment was issued vide **Annexure-34**

(AO 08 / 98) based on a Government of India letter issued in the year 1996 and the following line inserted :

‘The term “Ex-Service Pensioner” wherever used in the AO is replaced with the term “Ex-Serviceman’.

Hence, now ex-servicemen and families of ex-servicemen were held entitled to the said facilities, without there being any condition of pension, with the only exception that on the death of the ex-serviceman, only those families would remain entitled who are drawing pension of some kind. The following three categories now became entitled:

- (a) Ex-Servicemen
- (b) Families of Ex-Servicemen
- (c) Families of deceased personnel drawing pension of some kind

It was also provided in the Government Letter as well as the ibid AO 08/98 that the **definition of Ex-Servicemen as promulgated by the Department of Personnel and Training (DoPT) would be adopted for the said purpose**. As on date, the definition of Ex-Servicemen includes those who are pensioners as well those who are non-pensioners but were released with a gratuity on completion of terms of engagement. The definition has varied from time to time and is mentioned in the AO itself (**Annexure-34**). It was also already (correctly) provided in the orders that all those who after their release were re-employed in any other organisation or who are granted medical assistance by any such organisation would not be entitled to service medical facilities.

In the late 2000s, the office of the DGMS (Army) and DGMS(Navy) started requesting for withdrawal of such facilities from non-pensioners, incorrectly articulating that now even dismissed personnel would become entitled to medical facilities (**See Para 4 & 8 of Annexure-35** dated 23-05-1997). The statement was however wrong since dismissed personnel are anyway not entitled to the status of Ex-servicemen. The requests by DGMS (Army) as well as DGMS (Navy) to recall such facilities from SSCOs/ECOs were however rejected even by the office of the DGAFMS vide **Annexure-36** vide which it was re-iterated that those released on completion of terms

with gratuity such as SSCOs would also be granted medical facilities since they are covered under the definition of Ex-servicemen and emphasizing that there was no ambiguity on the subject. A similar clarification was also sent to Kendriya Sainik Board (KSB) vide **Annexure-37**.

The AG's Branch also, in the year 2003, issued another letter specifically stating that ECOs were entitled to medical facilities (**Annexure-38**) and also that it had the approval of the Adjutant General, who in fact is the officer dealing with all post-retirement welfare measures for Ex-servicemen. There was still reluctance on the part of service medical establishments in entertaining non-pensioner Ex-servicemen such as ECOs and SSCOs however all such doubts were laid to rest vide **Annexure-39** in which the medical establishment was clearly informed to grant all facilities to ECOs and SSCOs on production of Medical Entitlement Cards and it was also ordained that in cases of doubt, the medical authorities were free to contact the AG's Branch to check the veracity of Medical Entitlement Cards.

The availability of outpatient medical facilities was also available in the brochure of terminal benefits issued by the Army HQ for retiring personnel (**Annexure-40**).

The clarifications did not play the intended role since the medical establishment started refusing to treat such affected Ex-servicemen, some of them in their late 80s and 90s and in possession of duly issued 'Medical Entitlement Cards'. Besides being against the policy, this was also against the clarification provided by all concerned including the office of DGAFMS vide the above referred **Annexure-36**.

This problem emanating out of the medical establishment affected the medical reimbursement scheme by the Govt of India under the aegis of the Kendriya Sainik Board (KSB) for non-pensioner Ex-servicemen too (**Annexures-41, 42 and 43**) since the first step that was to be taken for re-imbursement was that the claim is to be accompanied by a certificate by the concerned Military Hospital that the facility is not available in that particular Military Hospital [**See Para 3(e) and 4(d) of Annexure-41** above]. However since MHs were not even entertaining non-pensioner Ex-servicemen and consequently

not providing such certificates, such entitled personnel remained unable to even claim medical re-imburement.

Some of the affected personnel approached the Armed Forces Tribunal, which ultimately ruled that such personnel were entitled to medical facilities and such important issues could not become a victim of a personality oriented approach.

Meanwhile, the then Raksha Mantri made a statement in the Parliament (**Annexure-44**) about extension of the ECHS to Short Service Commissioned Officers, the final sanction letter however is still to see the light of the day and we have been informed that it has not yet been approved. The Committee finds it extremely unfortunate to observe that a statement even by the highest political executive made in the Parliament of India can be held hostage to official processes and opinions of various personalities. It may not be out of place to mention here that even personnel of SFF and APS who are not directly under the MoD have been granted ECHS facilities though SSCOs and ECOs have not. The Services HQ, in the past, have been consistently recommending extension of ECHS to SSCOs to make Short Service Scheme more attractive.

Rather than passing instructions after the order of the AFT on the subject of medical facilities as above, which was a mere reiteration of existing policy, the office of DGAFMS got an appeal filed in the Supreme Court, an action which has affected the morale of such officers and has also brought gloom to those with faced with the grim reality that the Army itself has opposed the implementation of legally entitled benefits to its own former personnel. The move is not appreciated and is reflective of administrative egotism. Even more surprising is the fact that the entitlement of such facilities to SSCOs was being mentioned in the terminal benefits brochure issued by the AG's Branch and it was suddenly discontinued after the favourable decision of the AFT and when this needless controversy arose. Such sleight of hand with own personnel is also not appreciated. We also do not appreciate the fact that in the affidavit filed before the Supreme Court, we are informed that a grossly exaggerated false figure of affected number of personnel (more than 1,70,000) has been mentioned. If this is true that all we would say is that the situation is extremely unfortunate where some officers have gone

out of their way to deny benefits to those who were fully entitled in the first place. We were also disturbed to hear that in a similar recent case decided by the Principal Bench of the AFT, the office of DGAFMS has again filed an appeal.

On repeated prodding, it has come to light that the facilities were actually withdrawn since it was being felt that the system was increasingly getting overburdened and could not take the load of more beneficiaries, especially SSCOs and ECOs. We find this excuse hard to digest since there are not more than 10,000 affected ECOs and SSCOs who anyway are spread all over the country. Also those who are re-employed after release from the Services or those availing some other medical scheme are as it is not entitled to such facilities. We are also constrained to observe that 'overburden' can never be an excuse to deny entitled facilities and the Government must also seriously look into providing the maximum attention by relieving the medical establishment from such 'burden' and provide all that is required for efficient functioning.

The negative interpretation of the Army Order and the Government letter granting benefit to all those who have attained the status of "Ex-Serviceman" under DoPT notifications by a representative of the office of the DGAFMS on the pretext that the DoPT cannot prescribe medical facilities and the DoPT definition only deals with employment in civil services, is worthy of discarding straightaway. **We say so since the Government vide its letter of 1996 amplified through Army Order 08/98 has simply stated that facilities would be granted to "ex-servicemen" and for the said purpose has adopted the definition of "ex-servicemen" as prescribed by the DoPT, and it is not that the DoPT has granted medical facilities to such ex-servicemen as is being wrongly projected.** There are many instances where the DoPT definition of "ex-servicemen" has been adopted for various purposes and the attempt to confuse the DESW by the office of the DGAFMS in the past, and now this Committee, on the subject is clearly not appreciable.

The stand that 'pension' is still a requirement for medical facilities is also clearly not maintainable since the word 'ex-service pensioners' has been replaced by 'ex-servicemen' and the requirement of pension now only remains in the third category of

entitled persons, that is, “*Families of deceased personnel drawing pension of some kind*”, meaning thereby that on the death of the ex-serviceman, only those families would remain entitled who are drawing pension of some kind. The third independent category where there is a requirement of pension cannot be confused with the first two categories where there is no requirement of pension.

Had “pension” still been the requirement, the question remains that why would the Government have replaced the term ‘ex-service pensioners’ with ‘ex-servicemen’? Was it an exercise in futility? Also the question remains if non-pensioners were not entitled to MH facilities, why then would the Kendriya Sainik Board ask non-pensioners to first approach MHs to obtain a certificate of non-availability of facilities and then claim medical re-imburement specially incepted for non-pensioners? Also it defies logic as to how could the office of DGAFMS indulge in a volte face when it had itself agreed that such facilities were indeed admissible to SSCOs and had in fact turned down the demands of the DGMS (Army) and DGMS (Navy) to withdraw such facilities in the past.

In view of the foregoing, the Committee recommends as under:

(a) Existing limited outpatient medical facilities in MHs to non-pensioners holding the status of Ex-servicemen to continue as per already approved instructions and Services HQ to continue issuing and honouring Medical Entitlement Cards for such facilities as was the case till late 2000s. The entitled non-pensioners also continue to be eligible for medical reimbursement from Kendriya Sainik Board. It may be pointed out here that the said facilities are anyway not entitled to be granted to re-employed ex-servicemen or those who are members of any medical scheme.

(b) The unethical appeal filed against grant of such facilities to own personnel to which actually they were legally entitled to, be immediately withdrawn and such ego-fuelled actions be avoided in the future. **We wish such persistence and exertion in pursuing such misdirected litigation is rather used for constructive activities.**

(c) ECHS facilities for SSCOs as mentioned as already approved in-principle by the then Raksha Mantri and mentioned in the Parliament on the floor of the House, be implemented forthwith by overcoming all objections. The same be made applicable to all SSCOs and ECOs and all other personnel released without the benefit of pension but on completion of terms with a gratuity, present

and former, with certain amendments as deemed appropriate such as that the scheme can only be extended to the officer and spouse alone and that it would not apply to those who are re-employed with a cover of an organizational medical scheme. The issue of financial implication may not be relevant since firstly the scheme is contributory in nature, and secondly, the then Raksha Mantri has already made a statement to the effect on the floor of the house. Besides bringing succour to our veterans, it would act as a major morale booster to the rank and file and also help attract talent to the Short Service Commission Scheme.

(d) It is recommended that the Government must go all out to bolster the resources of the military medical establishment since they are rendering impeccable services in trying circumstances to our men and women in uniform. There should never be an occasion wherein doctors perform duties under pressure. An environment free of all encumbrances, external constraints and stress must be ensured for the medical establishment to function in an efficient manner.

2.3.2

WOMEN OFFICERS AND SSCOs WHO HAD OPTED FOR OLD TERMS (5+5+4 YEARS OF SERVICE) RATHER THAN THE NEW TERMS (10+4 YEARS OF SERVICE) DENIED PROMOTIONAL AVENUES, UPWARD CAREER PROGRESSION, PAY & ALLOWANCES, AND CONSEQUENTLY RETIRAL BENEFITS, AS LEGALLY ENTITLED TO THEM UNDER THE MINISTRY'S DIRECTIONS:

Short Service Commissioned Officers (SSCOs) and Women Officers who had opted for the old terms of 5+5+4 years of service rather than the newly introduced terms after 2006, that is, 10+4 years of service, have till date not been granted the benefit of regular pay, allowances and promotions to the rank of Captain, Major and Lt Col after 2, 6 and 13 years of service (as applicable to the entire Army) as introduced by the Government after sanction of the Cabinet after implementing the AV Singh Committee Report w.e.f 16-12-2004. Those who have retired in the meantime have also not been granted the requisite retiral benefits. While the said benefit has been granted to those Short Service Commissioned officers who were commissioned after 2006 and all Permanent

Commissioned officers irrespective of the date of commission, a small minority of pre-2006 commissioned short service officers has been left out despite the fact that the Government of India has already issued orders and a gazette notification under the Army Act extending the benefit of promotions as applicable to Permanent Commissioned Officers to all Short Service Commissioned Officers (Men and Women). The strange aspect is that this denial has been due to a reason which again has no legs to stand upon and merely reflects official obduracy. Paradoxically, similarly placed officers of the Navy and the Air Force have faced no such problems.

The following table shows gross injustice to these categories:

RANK	Length of Service required for Promotions as approved by the Govt and the Cabinet w.e.f 16-12-2004 applicable to all Army officers including Short Service Officers	Current Status regarding length of service implemented for Permanent Commissioned Offices irrespective of date of commission	Current Status regarding length of service implemented for Short Service Commissioned Officers commissioned after 2006	Current Status regarding length of service implemented for Short Service Commissioned Officers commissioned prior to 2006	Current Status regarding length of service implemented for Short Service officers under the Women Special Entry Scheme (such as the Petitioner) commissioned prior to 2006
Capt	2	2	2	<u>9</u>	<u>5</u>
Major	6	6	6	Made ineligible	Made ineligible
Lt Col	13	13	13	Made ineligible	Made ineligible

In order to make military service more attractive and to rationalize the varied promotional avenues, the Government initiated a study group followed by a committee headed by Sh Ajai Vikram Singh, which was accepted by the Government and the Cabinet and which provided for promotions to the ranks of Capt, Maj and Lt Col in 2, 6 and 13 years respectively. The same was also applied to the other services. **The said sanction was made applicable to Officers of All Arms and Services serving in the**

Army as on 16-12-2004 except the Army Medical Corps (AMC), the Army Dental Corps (ADC) and the Remount and Veterinary Corps (RVC). No exception was carved out for any cadre. The new dispensation was applicable to all officers including Short Service Commissioned and Women Officers which was clarified vide **Annexure-45** as under:-

“The provisions contained in the above mentioned documents are applicable to all officers of the Army including Short Service Commissioned Officers and Women Special Entry Scheme Officers but will not apply to officers of AMC, ADC, RVC and APS”

Though there was no controversy regarding the applicability of the same promotional avenues, pay and allowances, the Military Secretary's Branch of the Army HQ, issued a letter on 31-05-2005 in which it was stated that Short Service (Male) officers would continue to be governed by the policy of 1974 which provided that such officers would remain Lieutenants for their entire service and would only be promoted as quasi-substantive Captains after 9 years of service. It was further stated in the letter that Women Officers would be granted the promotion to the substantive rank of Capt after 5 years of service as per the policy applicable to them at the time of commissioning. The rationale advanced by MS Branch of the Army HQ for not granting promotions to such officers was (**See Para 5 of Annexure A-46**) that in accordance with Army Rule 2 (d) (iii), the service of such officers is not considered as '*reckonable commissioned service*' and that only Permanent Commissioned Officers were considered as having '*reckonable commissioned service*'. We find it strange that Army Rule 2 (d) (iii) has been used to deny the benefit since the said Rule basically has practical application for determination of seniority between members and the accused for court martial cases and has no connection with personnel policies. What is more surprising is that the service of SSCOs has always been considered as '*reckonable commissioned service*' for the purposes of promotion even as per the Army Instruction issued in the year 1974 which provided for quasi substantive promotions to ECOs and SSCOs after nine years of '*reckonable commissioned service*'.

Later in 2005, even a Gazette Notification (**Annexure-47**) was issued by the Government under the Army Act to the following effect:

“Substantive promotions shall be extended to Short Service Commissioned Officers (Men and Women) as applicable to Permanent Commissioned Officers”.

The applicability of the new promotion policy to SSCOs including women officers was also endorsed by the then Raksha Mantri on the floor of the Parliament.

Later in 2006, the Short Service Commissioned Scheme was tweaked ostensibly to make it more attractive and it was provided that now the Short Service Commissioned Scheme for both men and women would be initially applicable for 10 years extendable by another 4 years, unlike the earlier tenure of 5 years extendable by 5 and then another 4 years. Some officers opted for the new scheme while some opted for the old scheme. While the promotions applicable w.e.f 16-12-2004 were made applicable to the new scheme optees, the old scheme optees were left out.

The excuse for non-grant of benefits of promotion, pay and allowances to the old term optees as professed by the establishment, that is, the reason of their service not being ‘*reckonable commissioned service*’ as per the Army Rules, also now came to a naught in the fresh letter issued in 2006 (**Annexure-48**) for officers to be commissioned after the year 2006 wherein it was clearly provided that Reckonable Commissioned service would count from the date of grant of Short Service Commission to an officer and would count for promotion. Hence it was being implied that for short service officers commissioned after 2006 or those who were commissioned earlier but opted for the new terms of 10 + 04 years, their service would count as ‘*reckonable commissioned service*’ while for officers commissioned prior to 2006, exactly the same interpretation would be denied and their service would not be considered as ‘*reckonable commissioned service*’. The Navy and the Air Force however did not come up with any such prohibitive stipulation or artificial interpretation.

The action of the MS Branch in wrongly and negatively interpreting and applying an out of context juxtaposition, in what actually is a personnel policy, is hence clearly violative of their own policies and also the freshly issued letters for post-2006 commissioned

officers. Notwithstanding whether the officers had opted for old terms or new terms. It is not understood as to why beneficial policies are viewed with a pessimistic eye so as to identify or even create prohibitory stipulations or even file appeals when the issue is suitably addressed by judicial intervention. This particular issue has led to litigation which has been decided in favour of affected officers but which has been challenged by the Army HQ/Ministry of Defence in the Supreme Court. In fact, the controversy tacitly already stands addressed by the Supreme Court in **Civil Appeal D 32141/2011 Union of India Vs Leena Gurav** decided on 26-03-2012 upholding the decision of the Lucknow Bench of the AFT in **OA 208/2010 Leena Gurav Vs Union of India** dated 18-04-2011 wherein the applicability of the Gazette notification to such officers had been adjudicated (See Paras 5 and 6 of the AFT decision).

The following is recommended by the Committee in this regard:

(a) The appeals filed by Army HQ/Ministry of Defence against pre-2006 commissioned women officers/SSCOs who had opted for old terms (5+5+4) regarding applicability of the promotional avenues as applicable to all other officers of the armed forces, including post-2006 commissioned women officers/SSCOs, may be immediately withdrawn since the anomaly is due to a self-created negative interpretation even when the scheme had been approved for all officers by the Cabinet without exception and then promulgated by the MoD as was also conveyed vide **Annexure-45**. The litigation in this regard seems more of a prestige issue and serves no purpose.

(b) The Gazette notification issued by the MoD (**Annexure-47**) should be applied across the board for promotions of Women officers/SSCOs irrespective of date of commission or whether they had opted for old terms (5+5+4 years) or new terms (10+4 years) since the AV committee report or the gazette notification or even the Raksha Mantri's statement in the Parliament do not differentiate between such officers.

(c) The scheme needs to be extended to all officers without differentiation also because since the reason given by the MS Branch that the service of SSCO is not counted as '*reckonable commissioned service*' falls flat in view of the fact that

they are considering the same short service as 'reckonable commissioned service' for SSCOs commissioned after 2006 while not treating the same as such for officers commissioned earlier. There was no such discrimination provided in the Government letter issued on implementation of the AV Committee report but this discrimination was introduced by the MS Branch thereafter. No such negative interpretation of the term 'reckonable commissioned service' had been initiated by the Navy or the Air Force for their SSCOs. Even earlier, all promotions to quasi substantive ranks were also being undertaken by treating the service of such officers as 'reckonable commissioned service' for the purposes of promotion. It must also be ensured that there is universal application of benefits amongst all service whenever an interpretation of parallel provisions is involved.

2.3.3

NON INCLUSION OF MILITARY SERVICE PAY AND OTHER ELEMENTS OF EMOLUMENTS DURING FIXATION OF PAY ON RE-EMPLOYMENT OF MILITARY PENSIONERS ON THE CIVIL SIDE

This is an issue that has affected all military pensioners reemployed on the civil side but unfortunately not considered or analyzed in the correct perspective by the Ministry of Defence or by the Department of Personnel and Training by ignoring their own circulars and notifications published in the Gazette of India.

Prior to the Sixth Central Pay Commission (CPC), the components of pay structure of defence personnel were basic pay, rank pay, classification pay, good service pay etc which were all protected on re-employment. At that time, military pay-scales had an edge over civil pay-scales but the said edge was removed after the implementation of the recommendations of the 6th CPC which equalized the military and civil pay-scales by introducing common pay bands but instituted a separate element of pay called the Military Service Pay (MSP) to retain the traditional edge enjoyed by defence personnel. MSP was to count for pay-fixation as well as pension and the same was thereafter approved by the Union Cabinet and also notified vide a notification in the Gazette of

India vide **Annexure-49**. It may be seen from the appendix of the ibid notification that MSP was to count for pay fixation.

Paragraph 3.1 of Government of India, Ministry of Defence letter dated 12-11-2008 also clarified the component of 'Reckonable Emoluments' would now include Pay in the Pay Band plus Grade Pay plus MSP plus 'X' Group Pay plus Classification Allowance, if applicable. The fact that MSP was granted to retain and maintain the already existing edge becomes clear from a bare perusal of Paragraph 2.3.12 of the 6th CPC Report appended as **Annexure-50**. It was also specifically provided in the report that the MSP would count for both fixation of pay and pension. The said aspect was also clarified by the 6th CPC by giving an example of an Army Officer shifting to a Civilian Paramilitary organisation in Paragraph 2.3.11 of its Report (**Annexure-51**)

Based on the newly introduced concepts of 6th CPC, fresh instructions were issued by the Department of Personnel & Training (DoPT), Government of India, vide a letter issued by them on 05-04-2010 in which all modalities of pay fixation of re-employment of ex-servicemen and pensioners were explained. The letter was however vague and ambiguous as far as the treatment of MSP was concerned. When the said issue was raised by ex-servicemen time and again, a fresh letter was thereafter issued by the DoPT, Govt of India dated 08-11-2010 (**Annexure-52**) in which the following was clarified by the DoPT:

“Hence in respect of all those defence officers/personnel, whose pension contains an element of MSP, that need not be deducted from the pay fixed on re-employment”

That the above however was being taken to mean that MSP would not count for pay fixation but if an element was being given as pension, that would not be deducted. This interpretation seemed unfair since MSP was merely a new replacement of the pre-existing edge of the military scales over civil scales and hence if the edge in pay fixation through pay-protection was already available to such reemployed defence personnel prior to 6th CPC, it was of course logical not to now eliminate MSP out of the pay-fixation since MSP was merely a continuance of the already existing pay-edge. The 6th CPC

had also stated that MSP was to be considered in pay-fixation so that defence personnel did not suffer monetarily and the same had already been approved by the Union Cabinet.

When enquiries were made about the reasons of the ambiguous provisions related to MSP in the DoPT letter, it was discovered that the interpretation of non-inclusion of MSP in fixation of pay was based on a letter issued by Ministry of Defence dated 24-07-2009 (**Annexure-53**) for its own (defence) employees who are re-employed within the defence services themselves and in which no provision had been incorporated to include MSP for the purposes of pay fixation on re-employment.

The Committee observes that the entire confusion has been caused by the very fact that the DoPT had based its letter on MoD's letter dated 24-07-2009 (supra) wherein the definition of pre-retirement pay for pay fixation admittedly does not include MSP. However that is so because when such former defence employees are reemployed in the defence services, they are granted MSP in addition to their pay during their reemployed service as becomes clear from a bare perusal of Paragraph 4(a) of the said Annexure-53. MSP hence is not counted for pay fixation so that double benefit of MSP is not granted. To put it succinctly, such defence officers re-employed within the Armed Forces hence cannot be provided the benefit of MSP in pay-fixation on reemployment since they are already entitled to MSP in addition to their pay during the period of reemployment in the defence services and therefore granting them MSP in their pay-fixation and then again granting them MSP in addition along with the pay would naturally result in grant of double MSP to them which cannot be admissible. On the other hand, when defence personnel are reemployed on the civil side, MSP is not admissible along with their pay and can only be granted during pay-fixation. Hence in both the cases, whether re-employed in the defence or civil, MSP is to be granted only once, that is, either in pay-fixation while protecting the pay (when reemployed in civil) or in addition to the pay (when reemployed in defence). However the DoPT letter results in total denial of the MSP in pay protection. Moreover, the letter dated 24-07-2009 of the Ministry of Defence, besides being applicable for only reemployment within the defence services, only pertains to Officers as the opening paragraph itself ordains and that is the reason it does not contain fitment protection of

Classification Pay, X Group Pay, Good Conduct Pay etc which are concepts that are not applicable to officers but only to ranks other than officers. The feeble defence of one of the officers deposing before the Committee that MSP is not being counted in fixation of pay since an element of MSP at 50% is already being drawn in pension has no legs to stand upon and makes the entire concept of pay fixation redundant. We say so since in the same manner even 50% of the regular Pay and Grade Pay drawn during military service is being drawn in pension and if that logic were to be accepted then even Pay and Grade Pay would not be counted for pay-fixation on reemployment on the specious plea that 50% of the same are being drawn in pension. In fact it has been admitted by the official representatives that there was a meeting with representatives of the DoPT recently on the subject but the key issues of the existence of the *ibid* Gazette notification regarding counting of MSP in pay fixation and the analysis of the MoD letter dated 24-07-2009 and its logical non-applicability as far as MSP was concerned to reemployment on the civil side, were neither discussed nor brought to the notice of senior officers. **It was also brought to the notice of the Committee that the office of the PCDA(P) has issued a Circular (Circular No 179) on the subject of pay-protection without seeking sanction of the MoD or the office of the CGDA, which is truly bewildering.**

Reinforcing our thoughts, the Committee also fully agrees with the gist of the matter given by “ALL INDIA EX-SERVICEMEN BANK EMPLOYEES FEDERATION” (**Annexure-54**) who have submitted that MoD OM dated 24 Jul 2009 cannot be made basis for Pay Fixation of ex-servicemen other than officers, on re-employment in civil side due to the following reasons:

“(a) That the MoD OM dt 24 Jul 2009 is only applicable to Commissioned Officers re-employed within the Armed Forces. Hence, there is no mention of MSP, Group 'X' Pay, Classification Pay and Good Conduct Badge Pay, since such elements are not applicable/admissible to commissioned officers and therefore, the MoD OM dt 24 Jul 2009 would of course not contain any such reference. On the other hand, it is clear from the applicability of SAI/SAFI/SNI (No 1/S/2008 and 2/S/2008 etc.) issued on implementation of 6th CPC in and MoD letter dated 12 Nov 2008 that all such elements are

part of reckonable emoluments in case of ranks (PBOR) other than commissioned officers. The same is also mentioned in earlier DoPT letter dated 1986.

(b) That the MoD OM does not include MSP for the purpose of pay fixation since the said MSP is paid in addition as a part of pay vide directions contained in same OM Para 4. Hence, when full MSP is being paid in addition to emoluments to commissioned officers as per MoD OM dated 24 Jul 2009, there was no mention of counting MSP for pay fixation since then it would have resulted in grant of double MSP.

(c) As far as inclusion of MSP in fixation of pay is concerned the same is covered under the Gazette Notification dated 30 Aug 2008 and no administrative authority can issue orders contrary to the Gazette Notification....”

It is thus clear from our discussion above that the DoPT has wrongly followed the MoD's reemployment letter for regulating MSP. It is again reiterated that MoD had not included MSP for pay fixation since all officers reemployed in MoD by the way of the said letter are in receipt of MSP in addition to their salary after protecting the pay and if the MSP was therefore protected in pay while fixing it during reemployment and also by giving the additional MSP with the pay in the reemployed service, it would have amounted to double benefits of the same concept. By blindly following the MoD's letter, the DoPT has also wrongly not included elements such as X Group Pay and Classification allowance etc because the said elements are not available to 'Commissioned Officers' pay and are only applicable to PBOR and hence were not mentioned in MoD's letter dated 24-007-2009.

The Committee therefore recommends the following immediate action(s) in this regard:

(a) The Ministry should immediately inform the DoPT regarding the existence of the Gazette Notification dated 30-08-2008 which ordains that MSP shall be included for pay-fixation and therefore cannot be ignored by any instrumentality of the State. The MoD must also bring to the attention of all concerned the fact that MSP was granted to retain and maintain the already existing edge as

becomes clear from a bare perusal of Paragraph 2.3.12 of the 6th CPC Report and that it was also specifically provided in the Report itself that the MSP would count for both fixation of pay and pension. It must also be brought to the notice of all concerned that the said aspect was also clarified by the 6th CPC by giving an example of an Army Officer shifting to a Civilian Paramilitary organisation in Paragraph 2.3.11 of its Report.

(b) The MoD must also bring it to light of all concerned that the DoPT had based its letter on MoD's letter dated 24-07-2009 wherein the definition of pre-retirement pay for pay fixation admittedly does not include MSP but that was due to the reason since when such former defence employees are reemployed in the defence services, they are granted MSP in addition to their pay during their reemployed service as becomes clear from a bare perusal of Paragraph 4(a) of the said letter and hence MSP is not counted for pay fixation so that double benefit of MSP is not granted. Such defence officers re-employed within the Armed Forces hence cannot be provided the benefit of MSP in pay-fixation on reemployment since they are already entitled to MSP in addition to their pay during the period of reemployment and therefore granting them MSP in their pay-fixation and then again granting them MSP in addition along with the pay would naturally result in grant of double MSP to them which cannot be admissible. It must also be brought to light that on the other hand, when defence personnel are reemployed on the civil side, MSP is not admissible along with their pay and can only be granted during pay-fixation. Hence in both the cases, MSP is to be granted only once, that is, either in pay-fixation while protecting the pay or in addition to the pay but the DoPT letter results in total denial of the MSP during reemployment.

(c) That it must be brought to light for the benefit of all concerned that the letter dated 24-07-2009 of the Ministry of Defence, besides being applicable only for reemployment within the defence services, singularly pertains to Officers as the opening paragraph itself ordains and that is the reason it does not contain fitment protection of Classification Pay, X Group Pay, Good Conduct Badge Pay etc which are concepts that are not applicable to officers but only to ranks other than officers and it must be clarified that all such concepts also need to be protected as was the case till issuance of the fresh instructions by DoPT. The defence that MSP is not being counted in fixation of pay since an element of MSP at 50% is already being drawn in pension has no legs to stand upon and makes the entire concept of pay fixation redundant since in the same manner even 50% of the regular Pay and Grade Pay drawn during military service is being drawn in pension and if that be so then even Pay and Grade Pay would not be counted for pay-fixation on reemployment on the specious plea that 50% of the same are being drawn in pension.

(d) The fact that the PCDA(P) has issued Circular No 179 on the subject without even seeking sanction of the MoD or the CGDA and which contravenes the Gazette notification issued by the MoD after approval of the Union Cabinet is a serious issue which should not be repeated in the future. It is also observed with concern that officers are not applying proper mind while tackling such issues and this controversy had not even arisen if the relevant Paragraphs of the 6th CPC and the Gazette notification issued in pursuance of the same had been properly analyzed alongwith the letter issued by the MoD dated 24-07-2009 which has been blindly adopted without realizing that it had no applicability to reemployment on the civil side. The Committee would call upon all officers on critical appointments to properly apply mind and analyze such issues in the correct perspective since such actions not only result in frustration and upheaval amongst former employees but also lead to needless litigation.

2.4 **CHANGES IN APPROACH:**

Though we have dealt threadbare the various policies that require reconfiguration as above, the matter does not end there. The very fact that the system has been overburdened with massive litigation as above would point out to the requirement of course correction for the future, which we shall now chart out to recommend:

2.4.1 **Collegiate system of decision-making:**

The evident raison d'être for the lack of well-rounded decision making is the noting sheet culture where members of the decision-making mechanism or decision facilitating mechanism do not sit face to face to iron out anomalies or to initiate redressal of issues that may be cropping up time and again. Another problem is the lack of consultation of stakeholders such as employees, military veterans or veteran organisations and employees' federations though for civilians the system is slightly better due to the existence of the JCM. As a result, decision making in very important subjects is held hostage to personal opinions and lack of expression of objective thoughts on file which cannot be countered or questioned in an effective manner. Hence, it is recommended that whenever there is a decision of a judicial body which may affect many similarly placed employees or may have a cascading effect or is considered important from the viewpoint of employees, retirees or the Government, or even if there is a policy proposal under consideration without there being a judicial verdict, the decision of further

approach in the case may be taken by way of a democratic collegiate method by involving senior representatives of all stake-holders by way of a physical meeting/conference. **Affected pensioners or representatives of organizations/federations of retirees/veterans may also be called whenever the need is felt to have a holistic view of an issue being examined.** It is also felt that at times, various representatives of the Ministry or the Services HQ shy away from attending conferences or meetings called out by each another on the pretext of protocol issues due to which the one-sided file noting culture is gaining precedence over a democratic collegiate system. It may be appreciated that shyness over such minor issues cannot be a reason for not taking progressive decisions which are both in the interest of employees and the organization. We are not going into the minutiae of constituents of such collegiate committees and the same would be worked out by the Ministry and the Services HQ in conjunction for the various categories of decision making related to Court cases and policy.

We hence recommend that the decisions on important issues of policy and verdicts of Courts must be taken in a collegiate manner with face to face meetings rather than on file by involving all stakeholders, including voices of affected employees whenever a holistic view of the matter is required.

2.4.2 Non-implementation of decisions and flouting of existing guidelines on implementation of judicial verdicts:

It is a matter of grave concern that out of the total litigation related to the defence services pending before various Courts and Tribunals, a major chunk is of applications/petitions pending for execution of judgements and decisions of Courts and Tribunals. **To take an example from the cases pertaining to Army, out of a total of 10645 cases pending in various Benches of AFT as on 01-07-2015, 4790 were execution applications. Out of this data, in case of Chandigarh Bench, out of total 7117 pending cases, 4390 are execution/contempt applications which means 61.68% of total pending cases are execution/contempt applications alone.** Non-implementation of orders in time leads to not only frustration amongst litigants and a bad name to the organisation but also in massive outgo of taxpayers' money and

burden on the exchequer by way of costs, interests and avoidable payments to Government Counsel for multiple dates of hearings. It also burdens the dockets of the Courts and increases the figures of pendency of litigation in the country. It is again a cause of concern that there is an unwritten policy (and even reproduced in writing on certain files) that decisions are not to be implemented unless a contempt/execution application is filed by a litigant. Besides being unethical, this is clearly contemptuous. Again, most of the cases are not implemented on the flimsy pretext of being against 'Government policy' where it is not realized by the authorities concerned that a majority of cases in Courts is naturally meant to be against perceived policies otherwise there would have been no occasion for a litigant to seek judicial intervention had he/she been covered or satisfied with policy. An even more dangerous aspect of this situation is the fact that though the Department of Defence (DoD) of the Ministry of Defence, with the approval of the Defence Secretary and the Hon'ble Raksha Mantri, has already issued detailed guidelines for effective and quick implementation of decisions, it has had no effect on ground. The policy of the DoD dated 12-12-2014 issued by the CMU (**Annexure-55**), when read harmoniously, clearly provides that even when a decision is taken to challenge a particular order, the same is to be implemented within a particular time-frame and decisions are also to be implemented when there is no stay by a higher judicial fora [**See Para 3(d) & (f) of Annexure-55**]. Unfortunately, not only are these instructions being flouted but there was no satisfactory answer forthcoming from any authority as to why were decisions not being implemented in time. There was clearly an approach of 'passing the buck' evident. There are many judgements rendered in 2010 and 2011 which have not been implemented till date without there being a stay on them by any higher Court. Most of these cases pertain to pensionary benefits of the old and the infirm including disabled soldiers and widows and hence are to be processed by the Directorates of the Services HQ dealing with personnel and pensionary matters in conjunction with the Department of Ex-Servicemen Welfare (DESW) of the Ministry. The only reason being cited is that of lack of manpower and complicated procedures coupled with the fact that the Services HQ have only been delegated with powers to implement orders where further appeals are not contemplated which greatly narrows down the scope of implementation at the end of the Services HQ with no delegation of

power for conditional sanction in cases where appeals are contemplated. The DESW also points out elaborate procedures and that many a time files are inordinately delayed for months together at the Services HQ. It may however be appreciated that internal procedures or lack of manpower cannot be cited as reasons for not implementing decisions within the given time-frame, this approach besides being contemptuous is also against guidelines issued by the CMU/DoD.

It must also be ingrained in the minds of officers on key appointments that it is the most basic concept of law that a 'desire' to file an appeal or a review cannot be a ground for non-implementation of a judicial decision and the implementation can only be kept in abeyance in case there is a specific stay on the said decision by a higher Court [See Para 14(4) of the **Three Judge Bench decision** of the Supreme Court in ***Kunhayammed vs State of Kerala*** 2000 (6) SCC 359]

Keeping however in view the totality of circumstances, the Committee strongly recommends the following:

(a) Decisions be implemented within the time-frame as directed in the said judicial verdicts. **Filing of appeals should be an exception rather than the rule and even in cases where appeals are decided to be filed after a proper collegiate decision as provided in the preceding Para 2.4.1, verdicts should be implemented if the appeal is not filed in time and of course when even an appeal is filed but no stay is granted on the same by the higher Court.** Instructions in this regard have already been issued by the CMU/DoD (**Annexure-55**) and the same be followed scrupulously. In case of award of costs, interest or adverse order against the Chiefs of the Services or the Defence Secretary, responsibility be fixed on those officers who kept the files pending for an undue period and an entry be recorded to the effect in their service dossier after following due procedure.

(b) The reasons given about the lack of manpower or elaborate procedures involved for implementing decisions have no legs to stand upon and cannot be pretexts for non-implementation of Court orders. The system has to revolve around judicial verdicts and adjust itself with the changing times, and not the other way round. The Courts cannot be expected to alter their functioning in accordance with the tailor-made needs of the slow-moving wheels of the official establishment. In case it is felt that procedures or layers need to be reduced then a decision be taken in a collegiate manner under the aegis of the Defence Secretary to put into place a well-oiled machinery of implementation without

delay. The discussion may also include the issue of lack of automation rightly raised by the DESW. Again, we would like to point out an issue flagged by us in the introduction of this Report that it was interesting to observe that rather than adhering to the spirit of reducing appeals and litigation and faster implementation of Court orders rendered in favour of employees/former employees by cutting through red-tape as propounded by the Hon'ble Raksha Mantri and also by the Hon'ble Prime Minister, the focus of some officers has remained 'filing faster appeals', which in fact runs counter to the very noble intentions of the political executive in this regard.

(c) Though the Services HQ have been delegated powers for implementation of decisions (**Annexure-24**), the same is restricted to cases where no appeal is contemplated which itself narrows down the scope of implementation in a majority of cases since, according to the current attitude, all cases which are perceived to be against 'Government Policy' are being processed for appeals, including those cases where even the MoD and the Services HQ agree that the policy has already been interpreted in favour of soldiers and veterans or that the policy requires change. All other cases are sent to the MoD (JS ESW) for conditional implementation. There is a need to clarify or to extend the power of conditional sanction also to the Services HQ as was being done till a few years ago but was discontinued due to interpretational issues within the Ministry. The Services HQ may also be given the power to sub-delegate powers to Record Officers in certain batch/bunch matters such as the 'Honorary Naib Subedar' case where the law is well settled, in order to obviate the unnecessary and infructuous movement of files and wastage of taxpayers' money.

2.4.3 Overreliance on MoD (Finance) and Finance entities for decisions and policy formulation:

During the course of depositions, many issues have come to fore wherein the Ministry or the Services HQ have been unable to take a decision due to objections on the finance side. While there is no cavil with the fact that Finance elements of the Ministry and also the Defence Accounts Department are doing their utmost best to serve our men and women in uniform, it is felt by the Committee that there are certain areas wherein it is the executive decisions and law laid down by Constitutional Courts which need to prevail and not opinions of officers on the finance side.

For example, there are Appellate Bodies related to disability pension which are headed by the Adjutant General (and equivalent) and the Vice Chiefs respectively dealing with disability and death benefits of soldiers. These Committees, besides having medical and legal representatives, also have finance representatives on them. It has come to light that many-a-times, the decisions taken by all Members of the Committee related to the attributability/aggravation/service-connection of a death or disability with military service are overridden by the Member representing the finance side, and that too, not by way of a face to face interaction but on file, at times based on notings initiated by very junior officers. This is unacceptable due to a variety of reasons. **Firstly**, when a Committee has been duly constituted for such a purpose for death/disability benefits, it has to function by consensus/majority and one member of the said Committee cannot override the opinion of others unless the said decision is by majority. **Secondly**, analyzing a disability/death is a medical function which is then subjected to law as laid down by the Supreme Court in this regard, which can only be looked into by a legal expert and hence there should be no question of such decisions being overridden by financial experts. **Thirdly**, when committees have been constituted for the said purpose, then the said Committees should function in a Collegiate manner by majority and discussions have to take place face to face and not on file, otherwise the entire objective behind having an 'Appellate Committee' is lost and we may simply have a one-member committee constituted only of a financial expert. **Fourthly**, it is an affront to senior officers of the three services to be forced into accepting opinions of one Member who is not even skilled in examining the issue from a medical or even a legal viewpoint. **Fifthly**, the Supreme Court and High Courts have time and again held that financial authorities are only supposed to calculate amounts of due benefits and not take decisions on entitlements (See **Supreme Court in Civil Appeal 164/1993 Ex-Sapper Mohinder Singh Vs Union of India**, and **Civil Appeal 6509/2014 Brig Ram Chander Mailk Vs Union of India** decided on 10-12-2014 and **Punjab & Haryana High Court in CWP 16324/2003 Ramesh Kumar Sharma Vs Union of India** decided on 09-12-2003. **Sixthly**, the finance authorities, just like all others, including this Committee, are bound by the law laid down by the Supreme Court in attributability/aggravation/service-connection of disabilities and any decision contrary to the same cannot stand the

scrutiny of law and unnecessarily leads to burdening of the Ministry with litigation by disabled soldiers/families of deceased soldiers which would ultimately be allowed in terms of judicial dicta.

What is more bewildering is that an executive decision already stands taken under the Chairmanship of Secretary ESW on 06-02-2012 and again on 20-02-2014 (Annexure-56) that finance entities would not interfere where medical inputs or legal inputs based on settled law are involved but still such negative actions continue unabated. Further, before the Parliamentary Committee for Defence, in the year 2003, the Ministry had clearly stated that especially in cases where the disability had been declared attributable/aggravated by a medical board, the said declaration shall be treated as final unless the person himself/herself requests for a review but even in such cases there still is interference by financial entities. The following could be gainfully reproduced from the submissions of the Ministry before the Parliamentary Committee:

“...Government orders have also been issued to hold the recommendations of the medical board as final regarding attribution of disability to military service...”

(MoD OM No H-11013/26/2001/D(Parl) dated 12-02-2002)

Hence either the financial authorities are unaware of all of the above, or they are bent upon overriding the law and the decisions taken by the Executive authorities, including the Secretary of the concerned department, decisions of Constitutional Courts and even statements made before Parliamentary Committees.

We have been informed that even in recent times many decisions supported by medical and legal advice and at times even approved by the Vice Chiefs of the Defence Services have been overridden by junior officers on the finance side and that too without authority. This position should neither be acceptable to the Ministry nor to the Defence Services and should be taken a strong note of.

There are certain other live instances of this malaise pointed out to us which are really disturbing on multiple levels. For example, financial authorities (the CGDA) refusing claims of Liberalized Family Pension (LFP) on the pretext that the death had occurred

on 'Line of Actual Control' (LAC) and not on 'Line of Control' (LC, popularly known as LoC), the IFA refusing benefits to a soldier who was killed by a Leopard while on duty in a jungle area on the pretext that his trade was that of a 'carpenter' and that he did not die during 'performance of bonafide official duties', not realizing that what else would a soldier be doing in a jungle other than performing his duty? A similar case of a soldier killed by an elephant in a jungle area where he was on Temporary Duty was also rejected and so was the case of a soldier on patrol who died due to gunshot by his own weapon wherein the IFA started questioning even the Court of Inquiry which is a statutory fact finding body constituted under Statutory Rule 177 of the Army Rules. There also are examples wherein families of soldiers who died in proper notified operations due to falls or accidents or cardiac arrests etc due to harsh climate have been refused due benefits. These examples are just the tip of the iceberg. In all these cases the executive competent authorities have agreed to grant of benefits but the financial authorities have rejected the claims, and that too, without any legal authority.

We are at a loss to comprehend why negative energy and multiple reams of papers should be wasted on such issues concerning benefits of soldiers and deceased soldiers, which are anyway minor from the organizational point of view, when there are much more important financial matters worth pondering over. We find it difficult to digest as to how logic itself is being stretched to illogical limits due to an all-pervasive pessimistic environment just to deny benefits to our men and women in uniform. This simply shows that some officers are also not aware of the actual working and operating environment and conditions of the defence services, to which they should be duly exposed.

Ergo, though finance experts are required and fully desirable as a check on wrongful expenditure, overreliance on their inputs is not desirable while deciding upon entitlement based on medical and legal issues or overriding competent executive authorities. The decision on medical aspects in certain aspects has been delegated to the Services HQ by the Ministry vide Letter dated 14-08-2001 (**Annexure-24**) and hence cannot be usurped by any other authority.

On another level, even while making policy, it is found that the DESW asks the office of the CGDA to draft its letters and also seeks inputs on the desirability of policy. Inputs on the desirability of introducing policy changes are also sought from MoD (Finance). **Even at the cost of repetition, we would like to reiterate that the Finance authorities are playing a stellar role in the overall system of checks and balances but policy decisions and their merits/demerits are the forte of the executive authorities with whom such power rests.** To put it succinctly, for example, the valid question that can be posed to MoD (Finance) is as to what would be the total cost of implementing a particular policy if a decision of implementation is taken, and not as to whether a particular policy should be brought into force or not! While the first part of the question would clearly fall within the financial domain, the second part would fall in the executive domain as per the Rules of Business. Of course under the Allocation of Business Rules, 1961, MoD (Finance) is not an independent executive entity and even Defence Accounts Department functions under Entry No 15 under the DoD. The official charter of duties of the MoD (Finance) lists it as having an “advisory” and “assistive” role. Advice, therefore, is definitely permissible but not overruling of a competent executive authority. Moreover, we have reasons to believe that even aspects which are to be addressed in-house within the MoD at times are endorsed to the Ministry of Finance in expectation of elicitation of a negative note.

During the course of our deliberations, we felt that the representatives of the MoD (Finance), the IFA setup, the CGDA and the office of PCDA (Pensions) were not enthusiastic with ideas for bettering and further sensitizing the system and subtly kept on shifting the onus on to other agencies/departments. We feel that there is great scope for improvement in the approach of these important instrumentalities towards various other wings of the MoD and the Services HQ as also towards civil and military employees. We find that more sensitivity is required towards the lone soldier guarding our frontiers or a junior level civil employee of the MoD. We leave it to the wisdom of the office of the Hon’ble Raksha Mantri and the Defence Secretary to address the issue and bring about necessary changes in mindset.

The Committee therefore recommends the following:

- (a) Appellate bodies dealing with death and disability benefits would meet face to face in a Collegiate manner and not decide matters on file.
- (b) Finance representatives may not be allowed to override the opinion of other Members and all decisions be taken by majority since these issues require a medical analysis and legal inputs based on Supreme Court decisions and not a calculation of benefits. The judicial decisions on disability pension are anyway binding on all parties, including this Committee, and we would like to reiterate our advisory in Chapter I that such instances of overriding executive decisions and Court orders are contemptuous and we must reiterate that under Article 144 of the Constitution, all authorities are to bow down to the majesty of the law laid down by the Supreme Court and act in the aid of the Supreme Court.
- (c) Policy decisions envisaged or being deliberated upon by competent authorities should be endorsed to finance side or the office of CGDA only for calculating of financial aspects or implications but not for desirability of the decision based on merits of the issue which falls purely in the executive domain as per Rules of Business.
- (d) The staff dealing with pensionary claims and casualty benefits must gain first-hand experience on the existing conditions in which our men and women in uniform operate so as to sensitize them about the same. The said exposure must not be a mere formality but an authentic exercise.

2.4.4 Impersonal, non-adversarial and dispassionate approach and dissuading prestige-based litigation:

As stressed upon in our introduction, the Government is faceless and officers should not unduly make a prestige issue out of litigation or indulge in ego-fuelled appeals once the matter has attained finality. There should be no personal involvement in litigation or in specific cases and all matters should be dealt with by way of an impersonal and dispassionate approach within the four corners of law. Appeals should be filed on definite grounds when the Government is genuinely aggrieved or when it is felt that the Court or Tribunal has misread evidence or applied a wrong principle of law or has affected third party rights with a cascading effect, but not as a matter of routine on the ground that the Government has 'lost' a case. The idea is to assist Courts in the furtherance of justice and not defeat claims. Litigants should not be viewed as

adversaries and all out efforts should be made to assuage problems that can be resolved in-house. In fact genuine litigants are merely exhausting their rights granted to them by the Constitution of India and should be seen more as an aggrieved party rather than someone acting against the interests of the State. Whenever a petition is filed, the default reaction should not be to oppose it tooth and nail irrespective of the merits, but to see if the matter could be resolved with an in-house process so as to nip the problem in the bud at the earliest stage. It may be recalled here that the Supreme Court has stressed time and again that pensionary policies and beneficial policies are to be interpreted in a liberal and constructive manner and not in a literal and restrictive manner- an attitude which needs to be imbibed by key appointments. Amongst others, the same has been held by the Apex Court, amongst others, in **LIC and Others Vs LIC Officers' Association**, Civil Appeal 1289/2007 decided on 12-02-2008, **Madan Singh Shekhawat Vs Union of India**, Civil Appeal 1926/1999 decided on 17-08-1999, **Allahabad Bank Vs All India Allahabad Bank Officers' Association**, Civil Appeal 1478/2004 decided on 15-12-2009 and more recently in **Union of India Vs Rajbir Singh**, Civil Appeal No 2904/2011 and other tagged bunch matters decided on 13-02-2015 and **Union of India Vs Manjeet Singh** Civil Appeal 4357/2015 decided on 12-05-2015.

The Committee strongly recommends that all officers dealing with litigation in the Ministry and the Services HQ may be sensitized not to get personally involved in particular cases and to view litigation in an impersonal, dispassionate and non-adversarial manner to further the interest of justice and resolve problems wherever possible. The Committee also strongly recommends that sensitive, sensitized and experienced officers may be posted to key appointments in the DESW and the Services HQ dealing with pensionary and service matters and they be briefed appropriately for following a humane and empathetic approach before assuming appointments.

2.4.5 Lack of availability of correct talent and inputs to DESW and functioning of the Standing Committee for Welfare of Ex-Servicemen:

The DESW has very correctly submitted before the Committee the need and requirement of a quicker policy change in dealing with pensionary policies to redress grievances and to bring policies in line with judicial dicta. The DESW has however pointed out its handicap while dealing with the issue since it does not have the correct assistance of experts on such matters. The DESW has deposed in writing that there is a dearth of experts in both policy as well as legal branch to examine, analyze and provide inputs to senior officers and decision making authorities.

We fully agree with the DESW on this issue, and this, in fact, is the crux of the problem-lack of availability of correct inputs to the competent authorities. It is felt that some issues are not projected in the correct light, either by design or by default, on noting sheets giving a skewed picture to the competent authorities for taking a decision based upon proper inputs. Issues are processed and framed in a manner so as to elicit a negative decision. Opinions are expressed as to how a particular step should or could not be taken rather than how a particular step must be taken to resolve an anomaly. Impediments are identified but not solutions. This attitude obviously needs to change. And the only way to change this would be to evolve a participative process by way of a Collegiate system as discussed earlier in this Report. The other step that could be taken is to cross-staff the DESW with experts and also with Consultants with varied backgrounds to ensure an objective process of inputs. The MoD on the directions of the Hon'ble Raksha Mantri has already constituted a Standing Committee for Welfare of Ex-Servicemen which has not yet taken off though the letter was issued almost a year ago, that is, on 13-10-2014 (**Annexure-57**). This Standing Committee could be an excellent sounding board for the new policies related to pension and welfare of veterans which are under consideration of the DESW and also for a democratic discussion regarding the same and hence needs to be accorded a greater fillip and role. One anomaly, however, which stands out in the constitution of the Standing Committee is that it has only 3 recognized Veteran (ESM) associations as its Non-official members which cannot, by any stretch of imagination, be termed as representative of the veteran community.

The Committee, in view of the above, therefore recommends the following:

(a) The dearth of proper experts and correct inputs to senior officers and decision making authorities in the DESW as pointed out to the Committee is well appreciated and it is recommended that cross-postings may be made to the DESW from the Services HQ with officers who are sensitized, sensitive and knowledgeable and experienced in such matters. Such an arrangement should not be resisted but should be gladly accepted with open arms since the primary aim of DESW is to work for the welfare for veterans and their families and any step to meet that aim should be willingly adopted and would reflect true integration of the Ministry with the Defence Services. A start could be made by posting officers with Grade Pay Rs 8700 (Colonels or equivalent) at a Director level appointment in DESW. We must add here that we have been informed that such a proposal had been initiated in 2010/2011 but resisted by the DESW. In addition, or case of dearth of serving officers, retired officers of the three services and of the civil services or independent experts with experience in the field may be appointed as Consultants on contract. To ensure objective viewpoints, care may be taken not to employ those officers as Consultants who have at any time worked within the DESW during their service.

(b) The Standing Committee of Welfare of Ex-Servicemen should meet at regular intervals as envisaged and already notified and all major pensionary and policy decisions should also be discussed threadbare in the meeting so as to seek inputs of the end-users of those policies and not to keep them in the dark. Regular inputs of identified experts must be taken by senior officers of DESW so as to arrive at well balanced decisions and not always be guided by what is put up to them by the official machinery. It is further seen that only 3 recognized associations have been made a part of the Standing Committee. This cannot be treated as a just form of representation and the Ministry must call at least 3 more registered (not necessarily recognized) associations on rotation for each meeting. A notice must be issued and widely circulated on official websites calling for names of registered Veteran/Ex-Servicemen/Pensioner organisations who may want to attend meetings of the Standing Committee. **Further representatives of all ranks may be duly consulted in the Standing Committee.**

2.4.6 Continuous unethical filing of appeals even in matters that have attained finality:

Currently there is a tendency to file appeals in individual cases on the pretext of being 'against Government Policy' even in matters which have attained finality for similarly placed individuals at the High Court or the Supreme Court level. This tendency is not only unethical but also reflects an approach wherein officers handling such issues are unable to come to terms with the fact that the case has finally been decided against them. The tendency is compounded by legal advice rendered by Government Counsel in certain cases where even the concerned Counsel is not fully given the picture of the actual situation of the issue having attained finality or there is an unexplained urge shown for filing an appeal in a higher Court. The reason behind this approach is also that officers want to take a chance by bringing an issue again and again before Courts hoping against hope that in one odd stray case a judgment would be rendered against an employee/retiree and that could then be flaunted to deny benefits. This approach is worthy of being eschewed. Whenever an issue attains finality by the High Court or the Supreme Court, it should be given a *quietus* by issuing a general policy for similarly placed employees or at least a general sanction for other such cases pending in Courts, and by also conceding, if need be, the issues before Courts in a fair manner rather than contesting the matter again and again till eternity. In fact, in a recent case, **Civil Appeal Diary No 9103/2015 Union of India Vs Hari Singh & Others**, the Supreme Court had imposed a fine on the Ministry for filing an appeal in an issue that had attained finality against the Union of India in a similar case earlier. The observations of the Supreme Court in **Para 1.1** of this Report should also be kept in mind before taking action in this regard along with specific mention of case law in **Para 1.1.5**. In fact, even attempts of the highest of the political executive and the Law Ministry have failed to instill sensitivity in officials handling such matters. As discussed earlier, a letter written by the Defence Secretary seeking details of such cases has failed to wake up the concerned authorities from their deep slumber (**Annexure-2**).

The Committee would hence strongly recommend that there should be *quietus* and no further appeals in issues that have attained finality at the High Court or Supreme Court and all such pending appeals should be identified and immediately withdrawn. The Committee would also request the Ministry of Law & Justice and the Legal Advisor (Defence) to ensure the scrupulous adherence to the above.

2.4.7 Unnecessary red-tapism and hyper-technical requirements of forms, affidavits etc which militate against the spirit of the Hon'ble Prime Minister's vision for citizens:

One of the areas of concern of the Hon'ble Prime Minister has been the growing red-tapism in all aspects of governance. Of course, the Ministry of Defence is no exception. However, the issue acquires grave implications since the Ministry, especially the DESW, deals with cases not just of regular pensioners but those of old pensioners, disabled soldiers and military widows too, some of them almost unlettered and staying in the remotest parts of the country.

However, to claim many of their basic pensionary benefits, they are encumbered with suffocating official procedures which at times they find difficult to meet and which, on occasions more than one, are actually unnecessary and a wastage of public time. To take an example, how does it matter if a person gives a particular undertaking on a plain paper rather than an affidavit? How many times has the Ministry prosecuted a person for submitting a wrong affidavit? If a person's intentions are not right, then would it even make a difference if he or she is made to sign on an affidavit or on plain paper?

Though to the credit of the DESW, in the recent times, they have undertaken simplification of certain procedures but still a lots needs to be done to fulfill the expectations of pensioners.

There is yet another area of concern. The documents related to medical boards in the defence services were earlier branded 'Confidential' and were inexplicably not being provided to soldiers on their release or invalidation from service. As a result, many veterans and their families failed to appeal or represent against rejections of their claims of disability pension or Special Family Pension in the time granted to them or failed to

appeal at all since they were groping in the dark without the copy of the medical documents or medical board proceedings in the absence of which no effective representation could have been made. In the year 2005, the RTI Act came into inception but still documents were not provided as a policy till the year 2008 when the office of the DGAFMS carried out a board in which it was decided that medical documents of soldiers were supposed to be provided to them or their families under the RTI Act.

Hence it was only in the year 2008 that access to one's own medical documents became possible and which also made effective representations against recommendations of the medical boards and consequent denial of disability pension possible.

However, it is observed that many such representations or appeals are returned by the Records Offices or even by the Services HQ on the pretext of not being accompanied by a variety of 'undertaking certificates' or signatures of 'witnesses' etc and such hyper-technical objections. Undertakings are basically sought from individuals that in case their appeals are accepted, they shall not claim disability pension for the 'intervening period'.

This is clearly not in order. The grant of disability pension for intervening period is now regulated by the provisions of the Ministry's letter dated 10-11-2010 (**Annexure-58**) which makes it incumbent upon medical boards to opine about the percentage in the interim period and then the arrears are released in terms of the opinion of the board. Hence there should be no occasion for asking any undertaking from disabled soldiers since arrears would anyway be strictly released as per recommendations of the medical board. Even otherwise, such soldiers could not have earlier represented against non-grant of disability pension since they were totally in the dark about their medical boards and if an appeal is accepted and it is also opined that the disability did persist during the intervening period then it is not logical to hold back such payment which would have been released to the person in regular course had he/she been provided the medical board proceedings at the time of release. In any case, all such actions and earlier letters and instructions concerning intervening period are now redundant in view of the

Ministry's latest letter on the subject. We would also like to put on record that there have been instances when soldiers had been wrongly informed that their disabilities had been declared 'neither attributable, nor aggravated by military service' whereas in reality the disabilities were actually attributable/aggravated.

In today's age and time, hence, there is no reason for burdening our old soldiers, disabled, infirm and widows with forms and undertakings and red-tapism for filing appeals and representations. It is also observed that many-a-times such representations are returned by the Services HQ to the Records Offices or to the individuals for fulfilling hyper-technical requirements which is not expected from a welfare State or a caring organization. This also gives out a feeling of an element of mistrust towards those whom we had trusted with the defence of our nation.

There is also a unique system initiated by the MoD/DESW on the advice of the Defence Accounts Department for seeking forms and formats from affected military retirees for applying for pension under various orders issued from time to time. For example, for release of service element, a letter dated 10-02-2014 was issued by the MoD (**Annexure-59**) in which regressively a format was provided for affected old disabled soldiers and widows to apply through their pension disbursing agencies (PDAs) to the Records Offices which were then to process their cases to the PCDA(P). **It may be pertinent to mention here that some of these old retirees are in their 90s, and 100s too.** In fact, a decision had been taken by the then Secretary ESW that defence personnel and their families must not be made to apply for such benefits but these should automatically flow to them and the duty of doing so was that of the Record Offices and the PCDA(P). The following note was also recorded at Paragraph 55 of the minutes of the meeting dated 06-02-2012 between the then Secretary ESW and the then AG:

Decision: *Secretary ESW directed that in issue of such letter care should be exercised so that ESM do not need to fend for themselves but the benefit is extended to them automatically based on factual correctness"*

It is commonly known, more than 90% of affected personnel are unaware of issuance of any such pensionary letters since neither is this advertised, nor would people in such advanced age ever get to know of it. A similar format has regressively also been prescribed for pre-96 retirees for claiming rounding-off benefits w.e.f 1996 vide DESW Letter dated 15-09-2014

when a similar form had already been filled up by the very same retirees vide DESW Letter dated 19-01-2010. **It may be important to point out here that similar letters for grant of same pensionary benefits have been issued on the civil side in the past and there is no such requirement in the said letters to fill up or submit any such forms or formats** since probably it is adequately realized by the Dept of Pension and Pensioners' Welfare on the civil side that such red-tapism only leads to infructuous paper-work and corruption, besides leaving affected personnel without respite since they cannot be expected to learn or know about such developments on their own. **In fact, another such Performa/form prescribed by the MoD for service pension of certain ranks was abolished vide MoD Letter No 1(1)/92/D (Pen/Policy) Pt II dated 24 Nov 2009 when it was found that the system of Performa resulted in denial of benefits to pensioners.** Moreover, there is no legitimate reason to prescribe any such formats since more than the pensioners or the PDAs, it is the Record Offices and the PCDA(P) which are privy to such information and their burden cannot be expected to be shifted to old pensioners and widows. Moreover, many of such Records are now unavailable with pensioners and PDAs due to closure of the earlier pension disbursement systems and methods such as Post Offices. It becomes even more interesting to observe that such an approach continues despite a well appreciated decision of the Secretary ESW to the contrary way back in 2012.

The Committee hence recommends the following:

(a) Keeping in view the vision of the Hon'ble Prime Minister and the Hon'ble Raksha Mantri, a concerted review shall be carried out of all forms, affidavits and undertakings related to pensionary provisions and these shall be discontinued to the maximum extent possible. As the first step, there shall be no requirement of undertakings or prescribed formats for representing against rejection of disability/war-injury pension etc even in old cases and arrears shall simply be regulated as per the Ministry's letter dated 10-11-2010. A representation/appeal even if submitted on a single page shall suffice and no attempts shall be made by the establishment to reject/return such representations on hyper-technical objections. Disabled soldiers can also not be made to submit such certificates/undertakings when it was due to the lopsided official policies that no documents were even provided to such affected retirees who could not have then effectively appealed due to non availability of their own medical documents and medical board proceedings. Additionally, all personnel on release, irrespective of the manner of exit, may be optionally provided copies of all medical documents, including medical reports etc, related to a person's health or medical status throughout his/her service.

(b) Formats which increase red-tapism and shift the burden of work from the official system to old retirees, pensioners, disabled soldiers and widows, such as the formats prescribed with letters issued by the Ministry regarding Service Element and Broadbanding/rounding-off may be abrogated immediately and care be taken in the future not to encumber our retirees with such red-tapism. It may be recalled that such a decision already stands taken by the Secretary ESW earlier in 2012 but not honoured by the concerned agencies.

2.4.8 Suspect Legality of Pension Regulations, 2008 and Entitlement Rules, 2010:

The Pension Regulations for the Army, 1961 and the Entitlement Rules, 1982, both were, in recent times purportedly replaced by the Pension Regulations 2008 and the Entitlement Rules, 2010, by issuance of a cryptic letter by the DESW.

It may be recalled that the basic Pension Regulations for the Army are not statutory in nature and are in fact a compendium of procedural rules and various pensionary policies implemented from time to time after implementation of successive pay commission recommendations as approved by the Union Cabinet or policy changes undertaken on the civil side (currently by the Department of Pension and Pensioners' Welfare/DoPPW).

It was therefore a surprise to see the promulgation of the Pension Regulations, 2008, and also the Entitlement Rules, 2010, since no substantive changes of entitlement can be undertaken without a due democratic process of discussions with stakeholders or without approval of the DoPPW which alone can endorse pensionary policies for civil, railway and defence employees as per Schedule of the **Allocation of Business Rules, 1961**, which is appended as **Annexure-60**.

When we raised the question about the legality of the Pension Regulations, it was intimated to us by representatives of the DESW that as also informed to the top echelons of the DESW, the new Pension Regulations, 2008 were merely a collection of latest policies as issued from time to time and made no substantive or material changes to Pension Regulations, 1961. We were informed that it was just an exercise undertaken by officers of the Defence Accounts Department of collating all policies in one compilation for the ease of reference and operation. We have also been informed

that no minutes have been maintained about any discussions undertaken while 'compiling' these so called 'Regulations'. We were candidly however informed that these do not have the sanction of the DoPPW as required under the Rules of Business and even the higher authorities did not minutely go through the same since they were intimated that these 'Regulations' were merely a collection of the latest orders and not new rules *per se*. We were also informed that these were issued to the environment after the file was 'seen' by the then Raksha Mantri.

We are however constrained to observe that the higher echelons of the DESW or of the MoD or even the then Raksha Mantri have been kept totally in the dark about the reality and illegality of these 'Regulations' or the fact that many changes have been incorporated in the same by a sleight of hand in the name of 'compiling' existing policies.

To take a very few examples- the language of Regulation 16 of the Pension Regulations 1961 clearly implies that (unlike in the civil services) pension is **not** forfeited in the defence services on voluntary resignation unless a person is called upon to resign by the organisation or called upon to retire and he refuses to do so. However, while ostensibly 'compiling' the said Regulation as Pension Regulations 2008, it has been cleverly and innocuously provided in Note 5 under Regulation 17 that pension shall be forfeited on resignation. The reason of this deceptively clever attempt is not far to seek. Based on Regulation 16, the Supreme Court in **Union of India Vs Lt Col PS Bhargava 1997 AIR (SC) 565** had ruled that under the Pension Regulations, there was no automatic forfeiture of service for pension or gratuity unless the person was called upon to resign or retire, this of course was different than the view prevailing in the Accounts wing or even in the Services HQ. To cleverly blunt-out the effect of the Supreme Court decision and to override the law with their own interpretation, the innocuous looking note has been added in the Pension Regulations 2008, but alas, without any sanction of the Union Cabinet, without due process, without approval of the DoPPW and against law laid down by the Supreme Court. If we may ask, who gave the drafter of these "Regulations" the authority to substantial rights of defence personnel?

Similarly in Entitlement Rules, 2010, many progressive provisions of the actual 'Entitlement Rules 1982' related to disabled soldiers have been removed, amended or blunted out. Even the definition of 'invalidation' as provided in Rule 4 of Entitlement Rules, 1982 (that any person who is in a low medical category at the time of release from service shall be deemed to have been 'invalided' out for the purposes of disability pension) on which many decisions of judicial fora including the Supreme Court, had been rendered, has been reworded to suit the interpretation of a few officers, but again without any permission or sanctity of law.

There are many other regressive changes in these provisions with which we do not want to burden this Report. It would be enough to say that the above examples are just two instances that we have pointed out to bring to the light for the eyes of senior officers of the DESW that the new provisions are not just compilations of instructions issued after pay commissions etc but illegal alteration of substantive provisions of the actual Pension Regulations and an attempt to circumvent the law laid down by way of judicial intervention. The compiling of this 'compendium' is not so innocent as it has been made out to be, to us or to senior officers of the DESW.

The Committee hence regretfully observes that the so called 'Pension Regulations, 2008' and 'Entitlement Rules, 2010' have no sanctity of law and are not validly issued documents. We say so on the strength of the following grounds:

- That these documents are not just a 'collection' of latest instructions etc issued from time to time after implementation of successive pay commission reports as has been projected very innocently. Many substantive provisions of the actual regulations stand amended by way of a sleight of hand in these so called 'Regulations'. For example, there is no pay commission report and acceptance thereof which directs a change in the pensionary benefits on resignation in the defence services or the definition of 'invalidation', besides multiple other changes illegally carried out which we are not noting so as not to burden the dockets of our report.
- That no approval of the Union Cabinet has been obtained on these changes introduced cleverly in the text of these 'Regulations' and also no approval from the DoPPW which alone is authorized as per the Allocation of Business Rules, 1961, to approve pensionary provisions of civil, railway and defence personnel.

- That there has been no due democratic process or even any discussion with stakeholders before introducing these 'Regulations' or 'Rules'. Needless to state, rules and pensionary policies cannot be imposed as one-way traffic by clandestinely introducing amendments by changing the language of substantive provisions in the garb of making a 'compilation'.
- That no recorded minutes or notes of any alterations or amendments are available and the work of reframing and rewording had been handed over to officials of the Defence Accounts Department. Hence ultimately, the language chosen and imposed by a few officers has been circulated in the form of 'Regulations' and that too by altering the precious rights of retirees. Even the then Raksha Mantri was not informed about the true picture and the file was apparently simply shown to him without informing him about the fact that substantive provisions and rights of retirees had been altered. Thereafter, the 'Regulations' were simply circulated by way of a letter stating 'RM has seen'.
- Pension Regulations of the three services are *pari materia* to a great extent. While these Regulations of 2008 have been issued only for the Army, we are told that the other two services continue with the old (actual) Regulations. The question arises whether such a situation be allowed to prevail wherein different services are governed by varied provisions and that the Army is saddled with regressive changes which are not applied to the other two services.

The Committee hence strongly observes that the so-called 'Pension Regulations, 2008' or the 'Entitlement Rules, 2010' have no sanctity of law as far as alteration of entitlements is concerned. The same can at best be adopted to regulate procedural aspects and if there is a conflict between the same and the actual Pension Regulations 1961 or actual Entitlement Rules 1982 thereby affecting the rights of pensioners negatively, then the Regulations of 1961 and Rules of 1982 shall prevail to determine the entitlement. The Committee also recommends that any such changes in the future may be perused by senior officers of the Ministry with the minutest eye so that no amendment of beneficial or welfare oriented provisions is carried out by a sleight of hand. In fact, any change that may be recommended should be first put before the Standing Committee for Welfare of Ex-Servicemen as discussed in preceding parts of this Report. We would have recommended an enquiry into the officers involved in this crude attempt to change the entitlements of pensioners and disabled soldiers but refrain ourselves from doing so since many officers involved in this episode would have retired by now.

CHAPTER

III

MATTERS CONCERNING DISCIPLINE AND VIGILANCE

3. MATTERS CONCERNING DISCIPLINE AND VIGILANCE

One of our most satisfying interactions has been the one with the wings of the three services and Coast Guard dealing with Discipline and Vigilance issues. Though there might be some rough edges that need to be addressed, more or less it seems that the branches dealing with such matters are generally abreast with the changing law and the need of fairness and transparency in such processes, without compromising the requirements of discipline in uniformed services. There are some areas of concern which we shall identify in the succeeding paragraphs, but we find that the approach of the Ministry as well as the Services HQ is generally in line with the broader contours of our discussions.

Discipline is rightly considered the bedrock of life in the military. There could be no argument with the proposition that the very existence of uniformed forces is based upon utmost discipline which cannot be compromised. However, it is also true that men and women in uniform are Citizens of a democratic nation, and along with discipline, there is also an expectation of an evenhanded and fair approach in dealing with such issues, without which the discipline that we seek to enforce itself would be under threat. In this vein, the words of the Delhi High Court in **Sepoy Durga Prasad Vs Union of India, Writ Petition (Civil) No 5102 of 2001 decided on 26-08-2004** would be apt to be reproduced at this juncture before we proceed:

“...Discipline is highly desirable and is essential for achieving the purpose for which Armed Forces have been created and set up. **However, in order to obtain discipline and obedience, it is essential that the personnel of the Armed Forces are dealt with an innate fairness and justice is meted out to the members of the Force. This is necessary to not only ensure discipline but to motivate these brave soldiers who perform their duties in the service of the nation who have to be motivated to lay down their lives to the cause of the nation.** When guidelines have been laid down and procedures prescribed they should be applied to the letter lest the same shall result in demoralization in the lines and ranks of the forces which may lead to insubordination and indiscipline...”

It need not hence be repeated *ad nauseam* by us that along with the expectation of utmost discipline from service-members, there is also a parallel expectation from the organization(s) of fairness.

Recognizing the need for punishments commensurate with the offences, the following was observed by the Supreme Court in **Ranjit Thakur Vs Union of India**, Civil Appeal No. 2630 of 1987, decided on 15-10-1987:

“...But the sentence has to suit the offence and the offender. It should not be a vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the Court-Martial, if the decision of the Court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction...”

The Supreme Court in **Lt Col Prithi Pal Singh Bedi Vs Union of India**, Writ Petition No. 4903 of 1981 as back as on 25-08-1982 had held that **“fair play and justice cannot always be sacrificed at the altar of military discipline”** further holding that it was one of the cardinal features of our Constitution that a person by enlisting in or entering armed forces did not cease to be a citizen so as to wholly deprive him of his rights under the Constitution.

More recently, the Delhi High Court in **Major General BPS Mander Vs Union Of India**, Writ Petition (Civil) 4393 of 2007 decided on 03-09-2007 and later upheld by Supreme Court on 31.01.2013 had observed as under:

“...8. Personnel of the Armed Forces are entitled as much as any other citizen to the protection of the Constitution of India. The Supreme Court had observed over thirty years ago and reiterated regularly thereafter (yet regretfully unheeded by the Respondents) that **service in the Armed Forces can no longer be viewed as a support or adjunct of the Rulers...**”

The observations of Constitutional Courts are thus clear that while there is a requirement of maintaining the highest form of discipline in the uniformed services, the same cannot be hit by vice of arbitrariness or lack of fair-play. Discipline though is the bedrock of uniformed organizations, but injustice too cannot be allowed to prevail in the name of enforcement of discipline and we are glad to observe that all representatives of the Services who have deposed before us understand this aspect very well.

3.1 CAUSES OF LITIGATION

The reasons of litigation in the disciplinary and vigilance field are a little removed than what we analyzed in the previous chapters. Though these are being adequately addressed, it would be worthwhile to list out some of these reasons:

3.1.1 Disunited approach at times without universal application:

It is seen that in certain cases the Courts have interfered because of disproportionate approach in awarding punishments. There have been times when similarly placed individuals have been awarded varied punishments, some totally soft and some absolutely extreme. It has also been felt that at times the punishment has varied with the rank which is also paradoxical since the punishment should be ideally linked with the offence and not the rank of the accused. However the Services are alive to this aspect and are open to the suggestion of ensuring that such incidents are rare.

3.1.2 Non-adherence of laid down rules or procedural policies:

There have been times when Courts have interfered due to lack of adherence to procedural policies, especially principles of natural justice as envisaged within the Service Acts and Rules. The Services HQ are alive to this situation also and have issued various memos to all concerned to address this issue.

3.1.3 Ego/Vendetta based action:

There have been cases, mostly in Summary Punishments and Summary Courts Martial where it becomes evident that action was taken because of personal vendetta. The Services HQ are ensuring that such actions are minutely reviewed at the appropriate level and such instances are avoided.

3.1.4 Lack of opportunity of hearing:

We would render detailed recommendations on this aspect later in this Chapter **but would like to categorically record that this is the most important feature which if introduced formally and institutionally in the “Complaints” procedure could cut down litigation by more than half.** The Hon’ble Raksha Mantri had, in his meeting on 04-06-2015, proposed an Ombudsman like institution, we also feel that a similar system within the existing framework of rules can be initiated. Currently the redressal of grievances mechanism is based on a one-way noting sheet system wherein the person who has made the Complaint is not given the option to be heard even once by the Competent Authority before a decision is taken on his/her Complaint. This needs to change and would be discussed later in the Chapter. Though the Air Force has already (semi) institutionalized this system and the Navy already has it in certain aspects, the Army is yet to embrace it fully though the non-mandatory and discretionary system of “seeking an interview” is prevalent since times immemorial.

3.2 SPECIFIC DISCIPLINE AND VIGILANCE POLICIES/APPROACH REQUIRING REVISION/RELOOK

Though we are generally satisfied with the approach adopted by the branches dealing with discipline and vigilance in all three services, we would like to flag the following issues that need a little tweaking, on which broadly the Services HQ are also in agreement:

3.2.1

POLICY REGARDING DISCHARGE ON INCURRING RED INK ENTRIES:

This is again a perfect example of an already existing well-rounded policy where implementation of the same is lacking resulting not only in a plethora of litigation but also injustice to many personnel perpetrated by the fact that the policy was not properly adhered to. Before proceeding, we must record here that just after we had penned our thoughts preliminarily on this issue, a Three Judge Bench of the Supreme Court pronounced its judgement on this very issue in **Civil Appeal D 32135/2015 Veerendra Kumar Dubey Vs Union of India** on 16-10-2015, which surreally supports the exact view that we had in mind and also laying to rest the controversy once and for all. A

similar and detailed view was also taken recently by the Lucknow Bench of the Armed Forces Tribunal in **OA 168/2013 Abhilash Singh Kushwah Vs Union of India** decided on 23-09-2015 in which the Tribunal has painstakingly gone into the nuts and bolts of the correct approach in this regard.

Though it is not a legal requirement, personnel are at times discharged on incurring 4 or more red-ink entries under Army Rule 13 (3) item iii(v) and parallel provisions in the other two services. As we are all aware, red-ink entries are basically minor forms of punishments for transgressions in service where proper disciplinary action is not warranted. The Air Force and the Navy have similar policies of discharge. In the Air Force it is called the 'Habitual Offenders' policy. It may be important to point out here that there is no specific rule which authorizes or prescribes discharge of personnel for incurring red-ink entries and such discharges are being made under residuary powers of rules. Though in a slightly different context, the usage of residuary clauses was also deprecated recently by the Supreme Court in **Union of India Vs Purushottam (2015) 3 SCC 779**, decided on 05-01-2015.

Though a discharge for red-ink entries is not stigmatic in nature like dismissal as already held by the Supreme Court in **Union of India and others versus Corporal AK Bakshi (1996) 3 SCC 65** and does not even lead to forfeiture of benefits, it adversely affects personnel and their families if initiated before completion of pensionable service and hence the three services need to be very careful in effectuating such discharge.

Fortunately, adequate checks and balances have already been provided in the concerned policies but the same have been given a go-bye in certain cases forcing Courts to intervene and to address injustice. To take an example out of the policy of the Army dated 28-12-1988 (**Annexure-61**), it is mandatory for the authorities to follow a proper procedure including a "preliminary enquiry" and look into the following (See Note below Para 5 of the *ibid* policy) before initiating discharge on the basis of red ink entries:

- Nature of offences need to be analyzed.
- System should not be unduly harsh with the individual if he is approaching pensionable service.
- Due consideration should be given to long service, hard stations and difficult living conditions that the person may have been exposed to during his service.
- Discharge should be ordered only when it is absolutely necessary in the interest of service.

However it is seen that many such aspects, as above, clearly mentioned in the policy, are not looked into by the concerned authorities and at times even the procedure of preliminary enquiry and show-cause notice is followed in a post-decisional manner and carried out just as a formality after making up the mind for discharge. There may be other situations also that could have a bearing on the overall scheme of things. For example, though the list may only be illustrative, the following circumstances may also have to be kept in mind before initiating discharge on red-ink entries:

- Whether retaining the person would set a bad example for others or whether the offences are not so serious so as to discharge him. For example, a soldier repeatedly using abusive language with a senior or showing utter insubordination may not be on the same pedestal as a soldier who may have overstayed leave by a few days without any other disciplinary issue.
- There may be cases where an individual is indulging into minor transgressions due to a psychiatric reason and in such cases the person should be referred for psychiatric evaluation by initiating AFMSF-10 rather than discharging him.
- Whether the red-ink entries are stray entries occurring after a long period of good behaviour or has the behaviour been consistently undesirable.
- Whether the red-ink entries have been incurred during a very short period mostly under the same Chain of command.
- Whether the individual is in low medical category and hence can be released on medical grounds rather than red ink entries.

We fully realize that there could be no straitjacket formula in such issues however we feel that such aspects require a greater focus so as to balance out the rights of individuals with that of the organisation in the interest of justice and to reduce disputes at this end. Though the Statutory Rules do not provide any other requirement except show-cause notice, the salutary role played by the *ibid* policy of the year 1988 (and similar policies in the other Services) is to ensure that there is a system of checks and balances on unbridled power and there is no free run provided to any authority on the subject and that is why even a 'preliminary enquiry' is prescribed just to ensure that there is application of mind on the types of offences for which red ink entries had been awarded.

In view of the above, the Committee recommends the following:

(a) Before initiating discharge on the basis of red-ink entries (or equivalent in other services), special attention be paid to the conditions mentioned above, including the Note under Para 5 of AHQ letter dated 28-12-1988 (and equivalent letters in other two services) and the preliminary inquiry to enquire into the nature of offences. Additionally, the grounds on which deliberation is to be made as specified above and some of which are already contained in the policy, may be incorporated as a policy guideline for such cases and officers in the chain of command recommending such discharge as well as the authority competent to authorize such discharge may be directed in each case to record a note that they have taken into account the said guidelines before processing the given case.

(b) Though we have been informed that, for example in the Army, the JAG branch looks into such cases before effectuating such discharge as per latest policy, the results of the same are not evident in the face of multiple litigation pending on the said point before various benches of the AFT. The discharge, again with special focus on the considerations as above, be vetted by the JAG branch since though technically it is not stigmatic or akin to dismissal, it may still result in serious consequences for the individual concerned. As is dictated by the policy itself, discharge on incurring red ink entries is not a legal requirement and is not to be exercised not as a routine in all cases.

(c) All three services must look into the points mentioned in Army HQ's policy as above and the additional points that we have identified (supra) and examine whether to float fresh policies with those checks and balances or to reiterate existing guidelines by issuing clarifications and addenda. The issue is anyway no longer *res integra* and a Three Judge Bench of the Supreme Court has pronounced its judgement on this in **Civil Appeal D 32135/2015 Veerendra Kumar Dubey Vs Union of India** on 16-10-2015 which is binding on all parties. We may caution here, that while drafting any such policy or issuing any such clarifications, care should be taken by all three services to include all the points referred to as above by us and adjudicated upon in **Veerendra Kumar Dubey's** and **Abhilash Kumar Khuswah's** cases (supra) rather than finding out ways and means to circumvent the policy or the law laid down thereon.

(d) All pending litigation where the parameters as above have not been satisfied may be conceded or action be taken to reinstate or notionally grant pension if feasible after due diligence and similar action be taken on any representation/legal notice/petition on the subject in the near future in deserving cases.

We must put on record the appreciation for the sensitivity and willingness shown by the Services HQ in this regard.

3.2.2

GRANT OF MAINTENANCE ALLOWANCE TO THE SPOUSES FROM THE PAY AND ALLOWANCES OF DEFENCE PERSONNEL ON ORDERS OF THE COMPETENT MILITARY AUTHORITY

The Service Acts admittedly contain provisions for grant of maintenance to the spouse/children by prescribing a competent authority for the same. Based on the said provisions of the Acts, spouses of military personnel who allege that the officer has failed to maintain the wife/children are routinely granted maintenance on their applications. The amount of maintenance cannot exceed 33% of the pay and allowances of the individual.

After an application is received from the wife, a Show Cause Notice is issued by the Competent Authority on which the reply of the individual is taken and then the authority concerned passes an order of maintenance.

A brief introduction is required into the concept of maintenance as far as the Defence Services are concerned. We shall be referring to Sections of the Army Act, though it may be construed as a reference to *pari materia* provisions of the other Acts also. Section 28 of the Army Act, 1950, provides that the pay and allowances of persons subject to the said Act are immune from attachment on direction of any Civil Court or Revenue Court or Revenue Officer in satisfaction of any decree or enforceable order. It therefore follows that if a Court allows maintenance to the wife/children and a person subject to the Act refuses to pay, his pay and allowances cannot be attached on the orders of a civil Court in satisfaction of a decree or an order. This perhaps necessitated the existence of provisions of Sections 90(i) and 91(i) wherein in such a scenario on award of maintenance by a Competent Court and refusal of the person to part with the same being protected by virtue of Section 28, the Central Government (or any prescribed officer) could order the payment of such maintenance if the wife/child informed the Government, which could then be deducted compulsorily from the person's pay and allowances for satisfaction of the award. **It may be important to point out here that there is no such provision existing for civilian employees.**

This exceptional provision, it seems however, is now being used as a routine tool and is also leading to litigation. For example, as per the data provided to us, out of 849 applications received for maintenance in 2013, it was granted in 406 cases, in the year 2014, the figure was 441 out of 1095. We must caution here that the exact figures and percentage may even be (and indeed are) much higher since the process of grant of maintenance spills over to the subsequent year in many cases. In case of the Central Command alone, maintenance was finally awarded to 78.87% of the applicants in 2013 and 67.04% in 2014. Does it mean that it was found that out of the total applications received, such a high percentage of officers were found wanting in their familial and marital obligations? If yes, then what were the tools available to reach that conclusion?

It must however be placed on record here that such matrimonial disputes are essentially family/civil/private in nature and the Services do not have the wherewithal, capacity or ability to examine the veracity or truthfulness of the allegations, counter-allegations, replies and averments made by both parties, which is basically a matter of evidence. It is thus imperative that such disputes must be dealt with by civil courts and authorities under the proper law of the land legislated for this specific purpose, that is, Section 125 of the Criminal Procedure Code, 1973, the relevant Marriage Acts, Protection of Women from Domestic Violence Act, 2005, etc as the case and circumstances may be, rather than the employer getting into what may fundamentally be a civil dispute between a husband and his wife.

It is correct that defence personnel have the bounden duty to maintain their families but the exercise of looking into the aspect of whether there has actually been an abdication of such responsibility or duty and the truthfulness of allegations from both sides cannot be conducted by the defence services and hence for the purposes of maintenance it should be made clear that recourse to civil courts or statutory authorities is the correct procedure where evidence can be weighed for reaching the conclusion on the veracity of statements and the amount that would be appropriate in a particular case. Grant of maintenance by military authorities, therefore, should be an exception rather than the rule. However, the powers of the competent military authority must definitely be invoked for giving effect to orders of a civil court/statutory authority in cases where they may have granted maintenance but the individual concerned is not releasing the amount to

the wife/family, for which such powers are apparently primarily meant. It may also be kept in mind that grant of maintenance by military authorities or rejection thereof may amount to endorsing the statements of the wife or the husband directed towards each other and may influence the proceedings under family law/civil law that may be underway in civil courts or which may arise in the future. Such grant of maintenance may also interfere or cause confusion in the totality of what is essentially a civil/private issue between two individuals.

It is also a cause of great concern that maintenance is being granted by way of non-speaking orders on which the Army HQ has also expressed anxiety. Orders that result in civil consequences and in taking away the pay and allowances of an officer or a soldier must be preceded by a minimum amount of inquiry on the allegations and counter-allegations and a proper speaking order by the competent authority explaining what went in his mind before granting maintenance and also explaining why was he considering the maintenance of a particular percentage as appropriate. An opportunity of hearing whenever sought by an individual also needs to be granted. Non-speaking and bald orders just conveying the grant of maintenance from an individual's pay and allowances cannot stand the scrutiny of law being opposed to the principles of natural justice. It must be put on record here that the Indian Air Force is passing such orders after rudimentary authentication of allegations (though all three Services are handicapped in this regard due to lack of any investigative powers) and by way of proper speaking orders while the Army is not, though the Army HQ has itself expressed concern on this aspect. It must also be realized that maintenance is meant to tide over a difficult financial situation and not to lead life on someone else's expense and hence the wife's capacity to earn must be kept in mind before passing any such orders. The question to be put is not whether the spouse is earning/employed or not, but whether she has the capacity or capability to earn or not. It is also brought to our notice that income tax on the total amount of maintenance awarded to the wife is being paid by the personnel from whom the pay and allowances are being deducted, the legality of this action also seems suspect and a clarification needs to be sought by the Services HQ.

This is not to state that the Services should not interfere in exceptional circumstances. There still would be cases which may be difficult to categorize and extremely

exceptional which may require extraordinary measures, but then the process must meet the above parameters since reaching such conclusions is not an easy matter and is a highly technical evidentiary route which is treated even by Courts, which are fully empowered to deal with the subject, gingerly and carefully.

In view of the above, the Committee recommends the following guidelines, to also be incorporated in the respective internal instructions/orders issued by the Services:

(a) We agree with the Army HQ that requests for grant of maintenance in marital and family disputes are essentially civil and private in nature and should be ordinarily dealt with by civil courts and statutory authorities under specific laws meant for the said purpose. The defence services do not have the wherewithal, capacity or ability to check the veracity of allegations and counter allegations in such disputes which are essentially based upon appreciation of evidence, a role that cannot be performed by the defence services but only by competent civil courts.

(b) Grant of maintenance by the defence services must be an exception and not the rule however the said powers can definitely be invoked in extraordinary circumstances or when an individual is not complying with the orders of a civil court for paying maintenance to his family under the garb of protection of Sections of the Service Acts which prescribe immunity from attachment of pay and allowances.

(c) Maintenance, wherever awarded, must be preceded by some kind of inquiry (not just based on interviews by the chain of command) related to the allegations and counter-allegations of the parties, and executed by way of a proper speaking order discussing all issues raised by both parties, as is being currently done by the Indian Air Force and also with an opportunity of hearing before the competent authority as is being done by the Air Force whenever sought. This issue has already been adjudicated upon by the Kolkata Bench of the Armed Forces Tribunal **OA 13/2010 Maj Arjun Singh Tomar Vs GOC-in-C Eastern Command** decided on 12-04-2011.

(d) Award of maintenance results in a grave form of civil consequences for an individual wherein a cut is imposed on his pay and allowances, and should be taken as a serious matter and not dealt with in a routine manner. Moreover, it may not be initiated only based on the fact whether the spouse is working or not but on the fact whether she has the capacity to work or not. A situation cannot be allowed to prevail wherein an otherwise qualified/educated spouse stops working or refuses to work or refuses to take up a job in order to claim maintenance.

Again, evidence to this effect is a subject matter which can only be dealt with by a civil court. Elements of sympathy cannot override law and this is not to suggest that the family should be rendered remediless but the correct recourse is to civil courts by invoking laws which are specially legislated to cater for such disputes by weighing evidence.

(e) The issue of deduction of income tax from the individual concerned even on the amount of maintenance released to the family needs clarification from the concerned authorities.

(f) All internal orders/instructions issued by the Defence Services dealing with maintenance may be suitably amended in light of the above and all cases pending for initial grant or review of maintenance and all cases/petitions arising in the future seeking grant of maintenance or review of maintenance by defence personnel may be dealt with in the view of the above guidelines without affecting the amount already released.

3.2.3

POLICIES RELATED TO DISCIPLINE AND VIGILANCE BAN:

Multiple litigation has emerged on the policies of Discipline and Vigilance Ban (DV Ban) in the Defence Services. Though various decisions have been pronounced on the matter, the perception of the defence services is different than the actual reality on ground. We got a feeling during the submissions before us that the Services HQ have been resisting the march of law in this regard by articulating that they cannot be dealt with by the same yardstick as civilian employees. However, this approach is faulty to say the least since the basics of service jurisprudence are the same for both categories of employees and emerging from the same principles and interpretation of the same Constitution. Any artificial distinction in this matter is clearly impermissible. The issues concerning DV Ban and as to when promotions can be held in abeyance or when 'sealed cover procedure' is to be adopted etc are now no longer *res integra* and have been discussed threadbare by the **Supreme Court of India** in various decisions including the **Three Judge Bench** in **Union of India Vs KV Jankiraman 1991 (4) SCC 109 (Annexure-62)**. In fact, it is observed that the policies being followed by the Services HQ are quite in conformity with the law laid down by the Supreme Court in

Janakiraman's case but there still remain some rough edges and interpretational differences. The applicability of the law of the land in this regard in a military backdrop has already been discussed by the Punjab & Haryana High Court in **Lt Col GR Vinayak Vs Union of India 1996 (1) SCT 427 (Annexure-63)** and then even recently by the Principal Bench of the Armed Forces Tribunal in **OA 282/2013 Col (Now Brig) Punam Bali Vs Union of India** which was **later upheld by the Supreme Court** as informed to us. Failing to bring the policies and/or interpretation in line with the law laid down as above would purely amount to official obduracy by making it a prestige issue. Merely because the Supreme Court had observed that the 'question of law is left open' in one of the cases does not amount to approval by the Supreme Court of the Army's interpretation of the policy and merely implies that in that particular case though the Court was dismissing the case, it was not going into the questions raised by the Appellants. By no stretch of imagination can this be taken to mean that the law laid down earlier, especially by the Constitutional Courts, namely the Supreme Court and the High Courts, would become inapplicable. The law in this regard was again reiterated by the Supreme Court in **Union of India Vs Anil Kumar Sarkar (2013) 4 SCC 161 (Annexure-64)**.

In view of the above, the Committee observes that the law on DV ban and related policies is well settled by the Supreme Court and High Courts and the Services HQ need to bring their policies and/or their interpretation in line with the decisions of the Supreme Court, High Court and AFT as upheld in *Janakiraman's, Anil Kumar Sarkar's, Vinayak's* and *Punam Bali's* cases (supra) so as to reduce litigation at the inception itself by scrupulously following the laid down law. The artificial distinction between civilian and military employees as articulated has no legs to stand upon since the interpretation of law is based on the same standards and the same Constitution and has already been applied to a military backdrop by Constitutional Courts and also by the AFT.

3.3 CHANGES IN APPROACH:

3.3.1 Subjective approach, disproportionate punishment and a *status-quoist* attitude:

We must place on record that on the basis the inputs in this regard by the Services HQ we can safely observe that over the time the approach in dealing with such issues has improved by a great deal. The introspective deposition of the DV Branch of the Army HQ deserves special praise due to the moral courage of identifying the challenges in this regard such as the requirement of a humane approach, ensuring transparency, eschewing of preconceived notions and avoidance of vendetta. The DV Branch under the current AG has ensured that appeals are rare and not routine. Most importantly, the opportunity of hearing stressed upon by the DV Branch is one of the cardinal principles in a democracy which shall be addressed by us in detail in the succeeding paragraphs. Indeed, if such problematic areas as listed above are avoided, the entire processes related to discipline can live up to the expectations of not only the employees but also the organisation and then the judicial fora examining such issues. It needs no stress that arbitrariness is the enemy of fairness and if there is elimination of the negative elements from the decision making process as above, not only would satisfaction level improve but even the litigation would come down drastically. We also feel that at times redressal is not being granted by authorities competent to grant such redressal and the files are unnecessarily moved to higher formations/authorities even for relief that can be granted at a lower level. It needs to be emphasized that if a particular relief can be granted by a particular authority and the said authority is also in favour of granting such relief, then the same should be effectuated at that level itself rather than endorsing the positive recommendation of relief to a higher authority. There must also never arise an occasion where an individual's representation addressed to a higher authority is not forwarded by intermediary authorities. All three Services HQ must make it clear to the environment that such instances shall be viewed very seriously. We are also happy to observe that the DV Branch has truthfully stated that the time limit for dealing with complaints is met only in 19% of the cases which needs to be addressed. We feel this is a very genuine concern which needs to be appropriately dealt with urgently.

In view of the above, the Committee proposes the following:

(a) Clear-cut guidelines be floated to all concerned involved in the decision-making process from time to time to eliminate subjectivity in all assessments. If in any complaint malafides are alleged, the same may not just be brushed under the carpet but analyzed objectively. We also recommend that though there again can be no straitjacket formula, data may be maintained at the decision making level of punishments or redressal awarded in similar circumstances or cases so as to avoid discriminatory practices.

(b) It must be reiterated that appeals to the Supreme Court should be an exception and not the rule and as stated earlier, we are happy to know that all branches of the Services HQ dealing with discipline and vigilance realize this and file appeals only in cases where they feel the evidence has been incorrectly appreciated by the AFT. We may however observe here again that appeals should not result out of false premise of prestige but on actual legal grounds which may warrant challenge to an order.

(c) All competent authorities should be made aware of their powers of dealing with various petitions and complaints so that such representations that can be legally addressed (where relief can be granted) at lower level may not be unnecessarily endorsed to higher authorities. As brought out by the DV Branch of the Army, the time stipulation in deciding complaints is being met only in 19% cases and this needs to be addressed on an urgent basis. The adherence to time limits is not much of a problem area for other Services. All representations by individuals addressed to higher authorities must be forwarded by intermediary authorities and never held back. All three Services HQ must make it clear to the environment that instances where the contrary is reported shall be viewed very seriously

3.3.2 Opportunity of Personal Hearing/Personal Interaction:

This, to our mind, is the most important part of this Chapter and applies not only to discipline and vigilance related matters but other service issues also. The Hon'ble Raskha Mantri had proposed an Ombudsman like structure for the Defence Services in his meeting on 04-06-2015 to independently hear complaints of defence personnel related to their service and career related issues. We may also underline here that the purpose of the Constitution of this Committee by the Raksha Mantri was to improve upon the system of redressal of grievances to reduce litigation and to ensure that

grievances are addressed at the lowest possible level. The same, of course, was also the intention of DoPT OM 11013/2/2013-AT dated 31-12-2014.

The creation of an Ombudsman is a salutary idea postulated by the Raksha Mantri. However, this requirement can be met if within the existing statutory structure the redressal of grievances could be made more fair, objective and proactive and resultantly an **opportunity of hearing or personal interaction** could be provided to aggrieved personnel by the authority competent to take a decision on a complaint or an authority/officer closest to the Competent Authority, which we now set out to propose with detailed reasoning. **We are happy to observe that the Services are generally supportive of this idea, especially the DV Branch under the Adjutant General of the Army as also the JAG Branch both of whom have specifically supported implementation of this approach. In certain areas, it is already in vogue in the Air Force.**

Rule of law in every democracy is characterized by the observance of principles of natural justice. Out of all principles of natural justice, the one that stands out most cardinally is 'opportunity of hearing'. Though the said principle was initially strictly applied only to decisions leading to civil consequences or punishments, but with the march of jurisprudence, the principle has been extended by various instrumentalities of the State to administrative and Statutory decisions and also endorsed as such by the Supreme Court in various decisions including **Manohar Vs State of Maharashtra (2012) 13 SCC 14** wherein it was held that principles of natural justice must be read into administrative matters also. Needless to state, complaints/redressal of grievances initiated by invoking statutory provisions involve a statutory decision-making process which is also tacitly quasi-judicial in nature since the power to grant relief by the concerned authority flows from a legislative Act or statutory rule. Not just issues concerning complaints and discipline, even issues concerning purely administrative matters such as promotions have also been associated with 'opportunity of hearing' over the years by the Supreme Court [See **Prakash Ratan Sinha Vs State of Bihar (2009) 14 SCC 690**]

Opportunity of personal hearing or personal interaction has many advantages. It is what is known as *sunwai* in vernacular. Not only does it lead to satisfaction of the Complainant that he/she has been heard objectively by the decision making authority but at times it may also lead to the competent authority getting convinced that what the Complainant is stating is correct and the picture painted by the authorities on noting sheets lower in the chain could be incorrect. It may be pointed out that in almost all civil organizations and even in the Indian Air Force, opportunity of hearing is freely provided which leads to a higher degree of satisfaction level and also harmony within the system. Though the informal system of 'interview' is available in the defence services, it is discretionary and not institutionalized and not at the 'competent authority level' especially while dealing with statutory complaints. The system of opportunity of hearing also provides a catharsis to individuals who may feel stifled at times and hence would provide an outlet to at least open up before the competent authority. It becomes all the more important in defence services where there is no trade unionism or associations, and rightly so. It becomes even more important in the stratified rank structure environment and physically long distances of location.

Under the current system, complaints of aggrieved personnel are being dealt with by way of a one-way file noting system on which, after a complaint is submitted, the complainant is neither heard nor is given an opportunity to rebut what is put up against his Complaint by the dealing official chain. At times, decisions are taken based on the comments of those very officers/officials who have been complained against giving rise to a question of bias, which could be simply a perception, or even real, and which may not result in closure of the issue with rampant dissatisfaction due to the very reason that a person has not been heard and only a one-sided decision has been taken. There is also a challenge to address the perception that there remains an element of subjectivity in the processing of the Complaints since the system would perceivably remain favourably inclined towards the organisation. It also so happens that on many occasions, especially at ranks other than Commissioned Officers, personnel are apprehensive in approaching the institutional redressal system for the fear of reprisal

from superiors. All this would change with the system of institutionalizing 'opportunity of hearing' which would not only be in tune with the best practices of the current times, but also in line with decisions of Constitutional Courts, the views of the Hon'ble Raksha Mantri and also DoPT instructions issued from time to time. In fact, it has been emphasized time and again even by the Department of Administrative Reforms & Public Grievances that employees' frustration rises from the perception of inaccessibility and lack of concern of superior officers, failure to acknowledge and act upon grievances and non-involvement in organizational activities. One such communication was issued on 07-09-2005 (**Annexure-65**) as an official Office Memorandum and circulated to all Ministries and Departments.

The system would become more practical, proactive, progressive, responsive, democratic and participative. Of course, this is not to mean that an 'opportunity of hearing' is to be given on each letter, representation or complaint. It would only be applicable to complaints invoking the statutory process, that is, statutory complaints in the beginning, and then gradually could be made applicable to non-statutory complaints also. The system of hearing would be at the option of the Complainant but not be applicable mandatorily to routine representations, letters and complaints where the existing 'interview mechanism' is sufficient.

We are aware that whenever a new idea is proposed, there is bound to be resistance from certain quarters since inertia towards change is what comes naturally to human temperament. However, the recommendations that we are proposing are not radical but very practical and gradual while causing minimal dislocation and which would result in realizing the viewpoint of the Hon'ble Raksha Mantri, judicial fora and also the fundamental principles of a democracy which our men and women in uniform deserve more than anyone else keeping in light the principles of innate fairness the defence services profess. These recommendations are also within the four corners of existing provisions and require no legislative or statutory change.

The Committee, to sum up, hence recommends the following:

(a) An 'Opportunity of Personal Hearing' at the option of the Complainant/Petitioner or a personal interaction be introduced in every process of Statutory Complaint (not only limited to DV matters) at the decision-making level or at a level closest to the decision-making competent authority. This would meet the minimum requirements of judiciousness and also ensure that Complaints are not dealt with by way of a one-way file noting method at the back of the Complainant. This would adequately meet the concept articulated by the Hon'ble Raksha Mantri and also the requirements of various decisions while bringing about harmony within the system by raising the satisfaction level of employees. It may be pointed out that the Indian Air Force is already following the system with optimum results and this has also been recommended by the Discipline & Vigilance and JAG Branches of the Army. The hearing would further ensure that at times the Complainant may get convinced of the organization's point of view, or vice-versa, thereby leading to reduction of litigation and decrease of mistrust and of perception of injustice. It would also provide psychological upliftment by providing catharsis and outlet by way of a system of *sunwai*.

(b) The Opportunity of hearing would, at the outset, be only extended to Statutory Complaints, and the system be put into place within a period of six months from submission of this Report. The stage at which the opportunity of hearing is to be provided for each type (subject) of Complaints for all ranks [except MS matters (that is, matters related to promotions, confidential reports etc) of Commissioned Officers which are dealt with by us in a separate chapter] be identified and directed to be executed by the Ministry for all Services after issuance of implementation instructions. Stages in the process of Statutory Complaints that are redundant and can be cut-down to speed up the decision-making process may also be identified. It may be pointed out that there is no requirement of any statutory change or change in the existing dispensation for providing an opportunity of hearing and the concept simply involves the hearing of aggrieved personnel by the existing authority competent to take a decision or an authority closest to the said competent authority which may advise the competent authority, as deemed appropriate. It may however be kept in mind that where the Statutory Complaint is decidable by the Central Government under law, then the opportunity must be provided at the level of the Ministry and not the Services HQ, and in such cases, the Ministry under no circumstance would seek 'draft decision' from the Services since the Ministry is to apply its own mind on such Complaints independently and separately from the Services HQ and cannot abdicate its responsibility or outsource it back to the Services HQ. In case of any shortage of manpower in the concerned branches, additional responsibility may be ascribed to other officers of the Ministry for the said

purpose. The desirability (or otherwise) of the days every month to be earmarked for opportunity of hearing/personal interaction and/or modalities thereof may be looked into.

(c) The opportunity of hearing would only be provided on the option of the Complainant/aggrieved party if the said party desires so. The system would be extended to non-statutory complaints eventually if the Services HQ so desire after observing the system for Statutory Complaints for a period of one year from the date of its inception. The system of opportunity of hearing would **not** be extended to routine representations, letters and complaints within the system or routine issues in units where the existing dispensation of 'interview' can be further strengthened.

3.3.3 Holistic examination of all Complaints, Representations and Petitions and reduction of red-tapism:

It has been averred that on many occasions, complaints, representations and petitions are decided merely based on recommendations of intermediary authorities and that too without speaking orders and without due application of mind and in a run-of-the mill manner. We would place on record our appreciation for all three Services for agreeing to the fact that there is a requirement of being proactive in this regard. Needless to State, all authorities may be sensitized to base their decisions and remarks as per their own understanding and independent appreciation without being unduly influenced by recommendations on file. It may be appreciated, that as the term itself indicates, these are 'recommendations' and hence recommendatory in nature and the decision still lies in the hands of the executive authority competent to take a particular decision.

Another trend that is not comprehensible is that on many occasions, complaints, especially by ranks other than commissioned officers, are rejected or returned by intermediary authorities for not being in the correct 'format'. This not only leads to infructuous '*to and fro*' correspondence but also wastage of man-hours, financial resources and unnecessary heartburn and frustration. Individuals posted or deployed in remote places of away from Headquarters may not even have the wherewithal of understanding such 'formats' or adhering to any such instructions. It may be

appreciated that there is no requirement of any particular format in the Sections of the Service Acts dealing with redressal of grievances, and any such provision, by way of executive instructions, is merely recommendatory and not mandatory. As long as the facts of the issue and the relief sought/prayer are clear, there is no requirement of indulging in such red-tapism. While the nation as a whole moves away from procedures, it is our duty to conform to that spirit and abandon hyper-technical red-tapism.

We would therefore recommend that a proper application of mind shall be effectuated on all such decisions and the principles enunciated by us for civilian employees in Para 6.2 of this Report may be kept in view for defence personnel also. There must also not be any insistence on 'formats' for complaints and petitions and the guidelines articulated by us in Para 4.2.7 must be kept in mind.

CHAPTER

IV

MATTERS CONCERNING PROMOTIONS, CONFIDENTIAL REPORTS AND OTHER ALLIED ISSUES FOR ALL SERVICES

4. MATTERS CONCERNING PROMOTIONS, CONFIDENTIAL REPORTS AND OTHER ALLIED ISSUES FOR ALL SERVICES

In this Chapter, we would deal in detail with issues of promotions, confidential reports and ancillary matters of all Services. Both the MoD and the Services HQ have provided data to us on the issues related to such matters. Though we have been informed that only a minuscule cases reach Courts and Tribunals considering the large strength of the officer cadre, the said percentage being articulated may not be entirely representative of the actual reality since promotion related issues affect only Lt Cols (and equivalent) and above since the rank of Colonel (and equivalent) is the first Selection Grade rank in the defence services. Of course, most complaints relate to promotions and Confidential Reports. We have been informed that the error factor in such matters in the officer cadre is minimal but the figures provided to us by the Services HQ may not endorse that view entirely. For example, in the Army, out of the total Statutory and Non-Statutory Complaints in 2012, 2013 and 2014, the number of redressals granted vis-a-vis complaints received is 274/836, 346/1044 and 281/1059 respectively which means that redressal was granted in 32.77, 33.14 and 26.53 percent of cases. The figures, on one hand would show the fairness of the system in granting relief, but on the other hand would also show that there were problem areas in either rendering CRs or consideration of promotion in such a high number of cases and had these issues been tackled at the first instance with objectivity, even the number of Complaints would have decreased and so would have the cases finally leading to litigation.

4.1 CAUSES OF LITIGATION

The reasons for litigation, and more than that, appeals, are more or less similar to the universal reasons listed out by us in **Para 1.1**. However our interaction with officers of the branches of the Services HQ dealing with the subject and also of the Ministry, have led to the focus on the issues in the succeeding paragraphs.

4.1.1 Shifting of Goalposts and sudden changes in policy:

Sudden changes in policy have resulted in massive litigation, especially in the Army. It is felt by many that policies are changed without due democratic process and are based

on tailor-made needs and promulgated all of a sudden based on a cut-off date without a gradual shift-over or absorption by the environment. This leads to challenge by affected officers, which may or which may not ultimately succeed, but still resulting in litigation that the Services have to deal with, besides causing disharmony in the rank and file.

4.1.2 Citing 'Organizational interest' to reject Statutory Complaints:

It is observed that many-a-times, ambiguous terms such as 'organizational interest' are used to reject Complaints of officers even when infringement of policy is reported. This too leads to litigation besides causing frustration thereby bringing down the level of trust in the fairness of the system. Needless to state, ambiguous terms like 'organizational interest' cannot be allowed to override policy since it is the interest of justice that is paramount in such situations. Such rejections are bound to generate litigation since such actions can never stand the scrutiny of law wherein individual interests and also duly promulgated policies are overridden by engulfing them with a veil of ambiguity.

4.1.3 Transparency:

While in the submissions before us, it has been cited time and again that there is full transparency in the branches dealing with promotions and Confidential Reports, the ear to the ground reveals a different story wherein it is being perceived by many officers, especially in the Army, that the system of '*Show me the face, I'll show you the rule*' is most rampant. It has been informed to us that most policies concerning MS policies are now available online on the intranet but it is felt that there are many internal policies that are not known to the environment. Lack of availability of information is also bound to fuel gossip mongering and litigation since most officers are then groping in the dark as to what were the benchmarks or policies which weighed upon the Selection Boards while considering their cases. Many complaints are rejected on technical or hyper-technical grounds by declaring them untenable without there being clarity on the subject. In certain cases, Complaints are accepted against policy matters and in certain other cases those are rejected. Although this is not to say that there have been no improvements in the sphere of transparency. The Branches have come a long way since the times of yore when everything was hidden behind a veil of secrecy. We now have more interaction than before on posting matters and also wherein officers and also

interviews are granted more frequently. Compassionate cases are also dealt with on priority. Of course, 100% satisfaction level can never be achieved but strides have been made in this direction and we are sure that all three services now fully realize the importance of interaction and transparency in these issues.

4.1.4 Lack of adherence to time limits:

While the time limit for taking a decision on Statutory Complaints is 6 months as also conveyed on the directions of the then Raksha Mantri (**Annexure-66**), it is admitted by all concerned that the time limit is not being adhered to in many cases. The non-adherence of time limit also has a deleterious effect in multiplying litigation since it is open for a Complainant/Petitioner to approach the AFT after waiting for 6 months from the date of his Complaint/Petition (See Section 22 of the Armed Forces Tribunal Act, 2007). Hence, even in issues that could be resolved in-house by grant of redressal on Non-Statutory/Statutory Complaints, individuals are forced to seek judicial intervention in case a response is not received from the system in 6 months thereby leading to multiplicity to litigation.

4.1.5 Lack of opportunity of hearing:

Just like in the case of Discipline and Vigilance (DV) matters discussed in the previous chapter, there is a total lack of opportunity of hearing in matters concerning promotions and confidential reports. Again files are moved in a one-sided noting sheet manner and issues are decided without there being any interaction with the statutory authority which is to take a decision on the Complaint/Petition or even without an opportunity of rebuttal to what has been stated by the commentators on the Complaint/Petition of the concerned officer. At times, it is felt by officers that the Statutory Complaint deciding authority merely seeks inputs from the Services HQ which may have decided the Non-Statutory Complaint and even at times the draft of the final acceptance/rejection letter is put up by the Services HQ clearly pointing towards a case of '*from Caesar to Caesar's wife*' without there being an independent application of mind by the Competent authority. Of course this is the greatest challenge that shall be addressed by us in our recommendations in the succeeding paragraphs.

4.1.6 Lack of institutional memory and adherence to judicial precedents:

Though this Committee has been constituted by the Hon'ble Raksha Mantri to ensure reduction of litigation including appeals filed by the Government and ensuring that personnel do not have to approach Courts time and again for relief against similar issues, it is observed with concern that there were no inputs in the submissions before us as to what policies had been repeatedly commented upon adversely by Courts and hence needed to be rationalized. It is hard to believe that all is absolutely well within the system without the requirement of any change in any policy or attitude. Also it is seen from the submissions, especially of the Army HQ, that the main thrust has been to show that the MS Branch is quick in filing appeals before the Supreme Court in decisions passed against it, within the stipulated time. This itself shows that no introspection is taking place on the root cause of litigation as to why are cases being decided against the Government in this regard and what steps need to be taken to harmonize those policies to ensure lessening of litigation and promoting goodwill within the system and its personnel. The attitude displayed is that of the system being in the right and judgements being in the wrong. There appears also the lack of understanding of the basic concept of accepting judicial majesty and 'Separation of Powers' enshrined in our Constitution since in the 'Suggested Remedial Measures', the MS Branch of the Army has called for 'sensitizing AFT Members' on the conditions of service of the Armed Forces to 'curb judgements based on individual/judicial perceptions'. This to our mind, besides being contemptuous, militates against the very basic knowledge that there is no greater failing than the executive trying to influence or 'sensitize' judicial bodies. Both parties in a litigation are to present their cases and the Bench is supposed to decide the said litigation in terms of law, within the open contours of a Courtroom. The attitude also reflects that adherence to the rule of law by Courts is being referred to as 'judicial perceptions' which need to be 'curbed'. We need not encumber this Report with more on this thought process but would definitely say that this approach, to our mind, is neither correct nor warranted. The DV Branch had also, in its presentation, called upon for a "formal exchange and consultative process/mechanism between the executive and the judiciary" which again is a demand that baffles us. It indirectly is a suggestion for overreaching judicial bodies by one party (the official Respondents) in the litigation

which we find hard to digest. Senior officers in the Services HQ must take care to instill in their staff the basic concept of separation of powers and to make them understand that no party, entity, person or organization before a Court of Law can secure an advantage by such actions and our democracy is characterized by “Equality before Law”. We also hope and expect that the tendency to overreach judicial fora or attempting any such unwarranted activities is nipped in the bud. Courts and Tribunals are not Government offices but independent institutions whose majesty is to be respected.

4.2 CHANGES IN APPROACH:

4.2.1 Inculcating more transparency and eradication of the system of ‘Commentary’ in boards:

The greatest step towards reduction of litigation and ensuring harmony in the workforce is transparency. The more we attempt to hide, the more shall be the element of distrust and misgiving in the environment. This is not to say that there has been no improvement in this aspect over the years, as stated by us in **Para 4.1.3**, we are happy to note that there has been an appreciable change in this regard, however there is a pertinent requirement of further improvements. Besides policies concerning ACRs and promotions that are already in the public domain and on the intranet, all internal policies which affect the process of the board substantially including the calculation of vacancies, should be made available to anybody who may want to access the same. After all, these policies are meant for and affect the careers of officers and there is no requirement for keeping them hidden from public gaze.

Also, we find that the ‘Commentary’ undertaken during board proceedings on the profiles of officers under consideration for promotion has the propensity to influence the board Members wherein certain aspects of a person’s career can be overplayed while certain can be underplayed leading to subjectivity. We feel that it is a feature that can be easily done away with since it has the ability to influence or subconsciously influence the board members result in slanted opinions. The Members of the Board, after a dummy run, would definitely be adept enough to form their own objective opinions about officers being considered since the respective profiles are available with them. We were

told that the process may become a bit more time consuming for senior officers without the commentary who are Members of the board, however it would be pertinent to underline here that the requirement of fairness and judiciousness for dealing with the careers of officers overweighs any such consideration.

The MoD has also brought out that a common apprehension expressed in most complaints is that low marks, inconsistent with the overall profile, have been awarded in "Value Judgement" (subjective part of the board) and the same issue is also raised before Courts and Tribunals. The MoD has further called for a review of the policy of the aspect of "Value Judgement" so that the element of discretion is removed or reduced to the minimum. We feel, that though this is entirely desirable, the exercise may be conducted in a scientific manner by the MoD and the Services HQ and the system may be holistically reviewed to bring down subjectivity to the barest minimum. We cannot offer any direct solutions but we are sure that the MoD and the Services would make an honest effort to iron out the creases and make the system more robust by elimination of subjectivity to the maximum possible extent.

The Committee recommends as under:

- (a) There should be a thumb rule in all Services HQ that all policies and internal instructions, including procedural instructions, governing promotions and confidential reports of officers should be in public domain except when they concern national security or third party information, which shall rarely be the case in Human Resources and Personnel matters. There is no requirement of being extra sensitive on such issues and portray a kind of secrecy which may give rise to doubts and misgivings.
- (b) The system of Commentary must be relegated to the barest minimum and in due course be totally eliminated because it makes the entire process subjective since it has the tendency to influence the board Members wherein certain aspects of a person's career can be overplayed while underplayed which may lead to incorrect perceptions about a person's profile. Dummy runs can be organized to make Members of the Boards comfortable with the process at hand.
- (c) The policy of "Value Judgement" marks may be holistically reviewed by the MoD in conjunction with the Services HQ to keep subjectivity at the barest minimum levels.

4.2.2 Formation of a Grievances Examination Committee (GEC) for independently examining Statutory Complaints pertaining to Promotions, Confidential Reports and ancillary issues and recommending action thereon to the Central Government:

This is one of the most important aspects deliberated by this Committee.

Statutory Complaints presented by affected Officers concerning matters related to promotions and confidential reports currently are processed through the Services HQ which offer their comments to the Central Government (Ministry of Defence) which then takes a considered decision. More often than not, there is a perception amongst the cadre that forwarding of the Complaint to the Ministry is a mere paper formality since the Ministry has no expertise or way of finding out the veracity of the issues raised by the Complainant or the notes recorded on the file by all officers in the chain till the Services HQ and that in most cases the Ministry blindly accepts what is put up from below. There is also a feeling that on many occasions the Ministry asks the Services HQ to draft rejection letters that are then served upon officers, which sadly, as our interactions show, may be true to a certain extent. It is also felt by officers that when there is no staff or wherewithal of the Ministry to independently examine the Complaint threadbare without being influenced by the Services HQ, the entire process becomes redundant and ritualistic and then there is no material difference between a Non-Statutory Complaint (decided by the Services) or a Statutory Complaint (decided by the Central Government). A feeling of power centers emerging in the decision making process is also rampant where it is felt that those with 'approach' are able to cull out relief while others who are not so fortunate are left in the lurch. We may not want to express any opinion on the veracity of such perceptions but would merely state that the nurturing or growth of such perceptions is not healthy for the system as a whole and hence immediate steps become necessary to implement a process wherein "**Not only must Justice be done; it must also be seen to be done**". On the other hand, a feeling is also prevailing amongst the Services HQ that the files on Complaints processed by them at the apex level within the military are processed and commented upon by junior level staff in the Ministry. In short, the current system is one which appears to be imbalanced from all viewpoints and by all stakeholders.

The challenges before us hence are:

- Ensure a process of decision making on Statutory Complaints which is independent of the Services HQ with actual independent application of mind before a decision is taken by the Central Government since it is the said Central Government (Ministry of Defence) which is mandated with taking decisions on Statutory Complaints/Statutory Petitions for Redressal of Grievances.
- The system must appear fair to the Complainant without there being any element of perceived 'approach' or 'bias' or *connexion* of decision-making with the Services HQ which may even have already examined the Non-Statutory Complaint in many cases on the same cause of action or may have formed a particular view on the same.
- The process must be such wherein the decision is not taken based on a one-way file noting system but through a proper participative process wherein the Complainant is at least granted an opportunity of being heard or an opportunity to rebut the comments made on his case which is to be ultimately put up before the Competent authority so that the Competent authority knows both sides of the issue under consideration.
- The process must ensure that the Complainant can, by way of a matter of right, inform the decision making authority of any delay in decision or processing of his Complaint.
- Justice should not just be done, but also seen to be done by the authority competent under the Service Acts to decide Statutory Complaints.

The Hon'ble Raksha Mantri, in his meeting with the Solicitor General, Legal Advisor (Defence) and other senior functionaries on 04-06-2015 had recommended a system akin to an Ombudsman for the said purpose. The Department of Personnel and Training, on the other hand, vide its letter 31-12-2014 (**Annexure-67**) has recommended the formation of pre-litigation Conciliation Committees. Earlier, the DoPT, very progressively, over the last few years time and again has asked all Ministries to formulate a robust system of redressal of grievances of employees. The DoPT has also eschewed the tendency to shield junior officers when a complaint is made to higher authorities and has also directed that proper rules/policies etc should be indicated while rejecting any grievance (See Paras 7 & 8 of DoPT Letter dated 29-11-1988: **Annexure-68**). The DoPT has also again officially circulated in its

Compilation of Guidelines for Redress of Public Grievances (2010) a letter issued by the Cabinet Secretary on 05-12-1988 (**Annexure-69**) wherein it had been candidly mentioned that there is a feeling prevalent in the employees that just and legitimate grievances are not looked into with fairness and promptitude unless outside influence was generated. The Cabinet Secretary had also pointed out that if administrative response to compliance of basic grievances including promotions, seniority etc is proper, then it would result in decrease of heartburn. **The Cabinet Secretary had also called for ensuing institutionalized arrangements for redressal of grievances.** The DoPT further on 07-09-1993 vide **Para 2(vii)** of **Annexure-70** had called upon Ministries and Departments to identify grievances-prone areas and devise corrective measures to reduce the occurrence of such grievances time and again, which sadly, seems a far call in matters concerning military personnel. On 10-07-1995, the DoPT vide Para 2 (xi) of **Annexure-71** had directed that a Staff Grievance Officer (SGO) be designated in every Ministry/Department/Office to deal with grievances of employees. Most importantly, the Department of Administrative Reforms and Public Grievances on 01-01-1997 vide **Annexure-72** had taken note of the rising court cases involving service matters and underlined that the huge pendency of cases was affecting congenial relations of the Government and the employees, and that the Government, being a caring employer should reduce such cases and raise the morale and satisfaction of employees. The Department had taken note of the fact that frustration of employees rises from the perception of inaccessibility and lack of concern of superior officers and that not much attention was being paid to such issues. **The Department had recommended that appeals of employees should be provided to independent internal committees or designated senior officers before seeking judicial intervention.** On 06-03-1997, the same department had again emphasized that grievance-prone areas must be identified and defects, if any, should be removed and procedures be simplified for employees (**Annexure-73**). On 07-09-2005, again the requirement of a formal institutionalized arrangement was emphasized along with the requirement of timely and 'sympathetic' redressal (**Annexure-65**).

To give a snapshot of the above, the Hon'ble Raksha Mantri has spoken about the idea of an **Ombudsman**, the DoPT has asked for implementation of the idea of **pre-litigation conciliation committees** which has also been stressed upon by the MoD on Raksha Mantri's instructions vide MoD Letter No 61/D(CMU)/2015 dated 15-07-2015, the Department of Administrative Reforms and Public Grievances has floated the concept of **independent internal committees** while the Cabinet Secretary had called for **institutionalized arrangements for redressal of grievances**.

As above, we take note of the fact that the DoPT has time and again stressed upon redressal of service grievances and improvement of satisfaction level and also that the Department of Administrative Reports and Public Grievances has recommended the formulation of independent internal committees along with the cardinal idea of the Hon'ble Raksha Mantri for providing an internal Ombudsman type of mechanism. The requirement seems paramount in this time and age since it would result in an independent analysis of complaints by experts who would not be a part of the system and this approach shall bring in objectivity in the process. It would also result in many instances wherein, by way of opportunity of hearing and interaction, the officer may get convinced of the futility of his Complaint or further litigation, or the Committee would get convinced of the genuineness of the officer's claim. This would not only provide a universalized system for all services but also grant a chance of rebuttal to the Complainant regarding the official stand on his case.

Thankfully, since the system of Statutory Complaints already exists within the Service Statutes with the support of separate Sections on Redressal of Grievances available in the respective Acts, to give effect to the above it needs to be provided by simple instructions that the Statutory Grievance redressal and decision making body (The Central Government) is provided fair, objective and dispassionate inputs by a committee which works independent of the Services HQ and is characterized by a well-rounded composition on which the affected personnel have faith and which also gives them an opportunity of hearing if they so desire.

In this vein, the Committee proposes the formulation of a Grievances Examination Committee (GEC) which shall embrace the following salient features:

1. The GEC shall consist of three Members, one retired officer of the rank of Major General or equivalent, one retired officer from the civil service having held a post not below the rank and grade of Joint Secretary to Government of India and one law qualified independent expert not being a former or current Central Government Counsel. There shall be no Chair and the Officer-in-Charge of D(MS) in the Ministry of Defence or parallel appointment such as D(Air-I/III), shall be the Member Secretary/Convener of the GEC. Members of the GEC shall submit an undertaking of secrecy to the Ministry. (Note- As per the current system, all such Complaints are processed by the officer who is the proposed Member Secretary/Convener of the GEC)

2. The Statutory Complaint along with the inputs of the Services HQ would be put up to the GEC for consideration which shall provide an opportunity of hearing to the Complainant (only if he/she so desires) who would be allowed to personally interact with the GEC. A representative of the Services HQ shall also have a right to be present and participate at the time of interaction/hearing. However, no representative of the Service HQ would be allowed to interact with the GEC in the Complainant's absence on that particular case, in order to maintain impartiality and independence.

3. The Services HQ shall make all attempts that each file reaches the GEC in 5 months (or less) from the date the Complaint is made. In case the Statutory Complaint of a Complainant remains pending for six months or more, he/she shall be entitled to write directly to the GEC that his/her grievance has not been processed in time, in which case, the GEC would have the right to call for the file directly at whatever stage it might have reached and take further action as the GEC may deem fit.

4. The Comments of the Services HQ or the concerned officers on the Complaint along with the file would be transmitted to the GEC two weeks prior to the date of consideration by the GEC. The Officer would be informed at least ten days prior to date of consideration/interaction and the GEC shall be free to provide another date/dates of consideration to the officer in case of unavailability due to any reason, to be recorded in writing by the GEC.

5. The GEC after examination of the Complaint shall render its recommendations to the Central Government for a considered decision, which shall be processed in the first instance itself to an officer holding an appointment not below Joint Secretary to Government of India.

6. The GEC shall deal only with Statutory Complaints on Promotion and Confidential Reports and related issues of all three services and shall convene for a minimum of 6 days every month depending upon the pendency and workload of Statutory Complaints from time to time. Members would be paid an Honorarium per sitting and other modalities including Secretarial assistance shall be worked out by the Ministry of Defence. **No Member, including the Member Secretary/Convener (notwithstanding the Rotational Transfer Policy, if applicable), shall remain a part of the GEC for a period of more than 3 years and there shall be no re-appointment.**

7. No Statutory amendments or legislative action would be required for constitution of the GEC since the formation is only procedural by way of instructions and the power of final decision of the Statutory Complaint shall remain with the Central Government, as is the case at present, as provided in the Service Acts.

(Note: The GEC shall only deal with Statutory Complaints of officers qua promotion and confidential reports and allied aspects. In all other cases of Statutory Complaints, an opportunity of hearing has already been recommended in Paragraph 3.3.2 of this Report and the process on 'Opportunity of Hearing' as mentioned in the said paragraph shall cater for a system of opportunity of hearing in all other matters, including all matters concerning Promotions and CRs of JCOs & Other Ranks and matters other than Promotions and CRs concerning officers, and residuary matters, if any)

We further propose that the GEC be put into motion within a period of 6 months from the date of submission of this Report. This would not only meet the aspirations of the cadre but also the requirements of various DoPT and DAR&PG guidelines issued from time to time, the demands of equity, independent application of mind, judiciousness and also the opinion expressed by the Hon'ble Raskha Mantri as to having an independent 'Ombudsman' type of mechanism. Just as envisaged by the Raksha Mantri, this would function like a Three Member Ombudsman for such complaints. As a delinked point, apart from the above, we have been informed time and again that the Branches/Wings in the MoD dealing with such issues do not have the requisite manpower or domain knowledge, we hope and pray that a decision is also taken at the highest level not only to bolster manpower in such branches but also to ensure that officers with adequate expertise are posted to such appointments. Of course, due caution must also be exercised that lengthy tenures on sensitive appointments are avoided so as to avoid creation of epicenters of power within the establishment.

4.2.3 Discretionary clauses

We have been informed that there still exist some discretionary clauses in policies related to promotions and Confidential Reports. There also exist some clauses authorizing 'waivers' by 'competent' authorities. It is an established principle of law that discretion breeds arbitrariness which is best avoided. One person's gain on exercise of 'discretion' or 'waiver' by the 'competent authority' may be another person's grave loss in his/her career which cannot be covered with the veil of the justification of 'organizational interest'.

The Committee recommends the following in this regard:

- (a) A study shall be carried out by all Services HQ of policies concerning promotions and confidential reports and all clauses authorizing waivers at the discretion of any authority would be identified and reviewed.
- (b) Discretion and waiver would only be authorized in extraordinary circumstances (such as Court orders etc) and that too with reasons recorded in writing. Moreover, whenever discretion or waiver is exercised, it shall be accompanied with a certificate that it shall not adversely affect any other person, except when the same is being undertaken on judicial orders.

4.2.4 Sudden changes in policy:

Many controversies in Promotion matters have arisen due to sudden changes in time-tested policies or promulgation of amendments without giving time to the environment to absorb such changes. Changes in promotion policies have sometimes resulted in shifting of goalposts for affected officers, or at least a perception to that effect, resulting not only in litigation but also in discomfort amongst sections of some cadres which could have best been avoided. The Committee strongly feels and observes that policies should not be interfered with lightly and any change has to be effectuated gradually and with due participative process by involving all stakeholders and also seeking views of the environment. Policies should also not be changed so as to give any feeling of favouritism or a perception that the change has been tailor-made to help out any particular section of officers. The Committee also strongly feels that amendments in promotion policies should not be brought into force without a time lag from the issuance of the concerned policy letter. For instance, there would be personnel who would have

worked towards their aspirations in a certain manner by taking certain career decisions based on a particular policy, but if the said policy is suddenly changed, then it would amount to shifting of goalposts, a situation that is not allowed in law as per decisions of the Supreme Court in **Maj NC Singhal Vs Director General Armed Forces Medical Services (1972) 4 SCC 765**, **Ex-Capt KC Arora Vs State of Haryana (1984) 3 SCC 281** and also the **Three Judge Bench decision in K Manjushree Vs State of Andhra Pradesh (2008) 3 SCC 512**. The Committee also feels that any adjustment or readjustment of vacancies should never be undertaken by the Services HQ in a sudden or discriminatory manner since such actions provide fodder to the thought process that such changes are tailor-made to suit certain needs of particular officers. It is also felt that many-a-times perceptual differences have crept into the interpretation of policies with the Services HQ and the MoD not being on the same grid. This, in fact, has been brought to light in the submissions by the MoD also. The non-approval of certain important aspects of policy by the MoD has also led to greater litigation including in some recent cases in the Supreme Court. It is therefore imperative that MoD be informed about major promotion related policies before implementation. However we would like to caution all concerned here that such a consultative process should not lead to delays in policy formulation and approval and all such initiations of changes or new policies must always be completed in a time-bound manner on priority.

The Committee does not wish to go into specifics or details of such policies, but would strongly observe the following to ensure a just and fair future of career management:

- (a) Changes in promotion policy of all Services to only be brought about after a due analysis and scientific study, participative process and after seeking inputs of the environment.
- (b) Any change in policy not to be immediately effectuated and every policy to be implemented gradually and reviewed after a fixed period of time. For example, after following due process as enumerated in point (a) above, if a particular policy is issued say on 01-01-2016, then the policy must take effect after a sufficient time lag of at least eighteen months, for example, the said policy though issued on January 2016 must take effect only from June 2017 so that the environment and affected officers can absorb the changes.
- (c) All major promotion related policies or changes thereon be endorsed by both the Services HQ as well as the MoD before implementation.

4.2.5 Faster redressal:

It has been observed that decisions on many complaints, especially Statutory Complaints are extremely slow and do not meet the aspirations of the rank and file. In certain cases, the entire issue becomes infructuous before any decision is obtained on the same. In fact, this also leads to unnecessary litigation since officers then resort to filing petitions after waiting for 6 months and not eliciting any decision from the establishment as per Section 22 of the AFT Act. The then Raksha Mantri had already issued instructions in this regard vide **Annexure-66** but these are not being followed in letter and spirit. It may be pointed out by us that DoPT guidelines only provide 3 months for deciding such issues whereas even Raksha Mantri's directions of 6 months are not being adhered to in case of the Services. The excuse of lack of manpower cannot be a pretext to deny speedier redress to affected personnel since it is the duty of the organisation to do all that it can to meet the laid down time limits and individuals cannot be made to suffer the slow moving wheels of official machinery.

In view of the above, the Committee strongly recommends the following:

(a) Time limits as provided by the then Hon'ble Raksha Mantri's instructions vide **Annexure-66** be strictly adhered to and the establishment must pull up its socks to ensure compliance with the time limits rather than blame the delay on lack of infrastructure or lack of inputs from 'lower formations' in time. The interests of individuals cannot be harmed because of inertia within the system. Moreover, instructions be issued to process the case forward in a certain time frame, say 15 days, without waiting for comments in case the same on a particular Statutory Complaint are not received within the laid down time limits from any formation or individual. In other words, a Complainant should not be penalized with a delayed decision because of non-receipt of comments.

(b) Any automation or strengthening of procedures to be carried out in this respect may be undertaken forthwith by all three Services in conjunction with the Ministry since non-adherence to directions of the Hon'ble Raksha Mantri in this regard is inexcusable. It may again be reiterated here that the standard of grievance redressal as per DoPT guidelines is 3 months only while in certain cases more than a year is being taken by the Services HQ thereby affecting the precious rights of men and women in uniform.

4.2.6 Resolving *sub judice* matters:

There may be certain issues pending in Courts which could be resolved by the organization itself. However, it is seen that as soon as an individual files a case before a judicial fora, the same issue is considered untouchable on the pretext of being *sub judice*. This approach is not correct. There could be some issues that could be resolved in-house even after they are taken to court and an attempt must be made to resolve them if possible without waiting for the dicta of the Court. We are however happy to observe that the Indian Air Force is following this procedure and attempts to resolve issues even when the same are pending in Court. It is also felt that many matters related to promotions and confidential reports, especially related to the Army, remain pending before Tribunals for inordinately long periods on the pretext of lack of availability of officers to present such cases and files at various stations. If that be so, then the resources need to be augmented appropriately and the system needs to gear up with the growing litigation and placement of various Benches of AFT all over the country and it is not the judicial fora which should be expected to revolve around the convenience of the officialdom. Precious time is also lost in not arguing the cases on merits but defending such matters on technicalities such as jurisdiction and limitation fully knowing that there is no limitation provided for filing Statutory Complaints and if a Statutory Complaint is rejected on merits by the Ministry and the case is thereafter presented on time before a Tribunal after the said rejection (or if the delay is condoned by the Tribunal) then the question of limitation does not arise. Similarly, there is no logic in defending cases on the technical aspect of territorial jurisdiction before a Bench if a cause of action or part thereof has arisen before the said Bench. Harping on such technicalities results in damage to the system itself. For example, if an officer files a Petition before Bench 'A' of the AFT and the MS Branch protests its jurisdiction and if ultimately the said case is dismissed, then the same person would file the same case before Bench 'B' thereafter again engaging the system with the same case and resulting in utter wastage of resources and finances on both sides and with movement of files and officers and engagement of fresh Counsel again at a different station for the same cause of action. Moreover, it causes no prejudice to the system to defend the case

anywhere in India. To put it succinctly, it must be ensured that the focus remains on merits of the issues in Courts rather than technicalities of minor nature.

The Committee therefore recommends that a review may be undertaken of all cases pending in various Tribunals and Courts relating to promotions and confidential reports to see if these can be resolved in-house and if yes, then remedial measures taken so as to avoid unnecessary waste and pressure on the dockets of the Court and pockets of the litigants, including the official side. Such exercise of review of cases be repeated every year. Further the manpower be augmented to avoid delay in decisions in such matters and the focus of the system must remain on defending cases on merits rather than mere technicalities.

4.2.7 Formats provided for processing statutory complaints and other hyper-technical requirements:

One of the clearly jarring inputs that we have received is about rejection of Statutory Complaints by intermediary authorities on the pretext of not being in the correct 'format' or not being of the correct word length etc. Precious time is wasted in such infructuous correspondence due to which the processing of the Complaint is delayed at times for months together. This is also happening in cases of ranks other than Commissioned Officers and in all types of Statutory Complaints. This is clearly not in order. It may be recalled that none of the Service Acts or statutory rules stipulate any kind of 'format' for submission of Statutory Complaints and any such format provided is merely a guideline for uniformity and convenience and hence procedural and recommendatory in nature and not at all mandatory. The Committee strongly feels that no Statutory Complaint can be returned on the pretext of not adhering to the format, if it meets the broad outline of provisioning of a clear-cut background of the case and the prayer. In fact, the Indian Air Force prescribes no such format and the system is working quite smoothly without there being any rejections on hyper-technical points. It may be emphasized again that the Department of Administrative Reforms & Public Grievances had iterated and reiterated as back as in 1997 and 2005 that procedures must be simplified and made less cumbersome for addressing staff grievances (**Annexures 72 and 65**). Further it may be noted that the Central Government, to whom Statutory Complaints are addressed, has

neither prescribed nor insists on any such formats and hence it may not be proper for intermediary authorities to do so when the Acts provide no such format.

In view of the above, the Committee strongly recommends that no Statutory Complaint of any rank be rejected or returned on the ground of not being on the correct 'format' or on any other hyper-technical requirement when the background of the case and the relief sought is clear. It may be recalled that there is no requirement of any format in the Service Acts and any such format provided by way of executive instructions or orders cannot override the statutory or legislated provisions. In addition, no Complaint, petition or letter endorsed through proper channel, initiated by a member of any rank, addressed to a superior authority, be held back or delayed by any intermediary officer or authority.

4.2.8 Clear-cut policy on tenability:

Sections 26 and 27 of the Army Act and parallel provisions under Air Force and Naval law make it abundantly clear that Statutory Complaints are provided for military wrongs, that is, wherein a person subject to the Act deems himself/herself wronged by a superior authority. This of course would include actions such Confidential Reports, Promotions and disciplinary/administrative issues of various kinds. However, to our mind, these provisions cannot exactly cover a challenge to policy matters.

By the very nature of the Sections dealing with Statutory Complaints, it becomes clear that policy matters cannot be agitated by way of such Complaints. The correct manner for agitating policy matters and issues or grievances related to policy is by way of regular representations and letters, through proper channel(s). Of course, the non-application or wrong application of an existing policy can definitely be raised through a Statutory Complaint. However it seems that the Services HQ are not following a uniform policy in this regard. In certain cases, challenges to policies of the Services or the Government are being accepted in Statutory Complaints while in other cases Statutory Complaints made in respect of policy matters are being rejected being untenable. Following this dichotomous approach, at times, when a person after due representation approaches a Tribunal or a Court, a hackneyed objection is always taken that the person concerned had not exhausted his/her statutory remedies when in reality such a

complaint was not even tenable in such matters. There hence needs to be a clear-cut approach and a policy letter issued advising personnel on the areas/subjects where a statutory Complaint would be applicable or admissible, and where it would not be, so as not to waste the time of personnel as well as the system and also to avoid infructuous correspondence and burdening of judicial fora.

In view of the above, the Committee recommends that a clear-cut policy/instruction be issued laying down as to in which cases a Statutory Complaint (or even a Non Statutory Complaint) would be maintainable and in which cases it would not be. For example, it may be clarified to the environment that in cases where an individual is challenging a policy or requesting for change in policy or amendment in policy or in areas where a person does not deem himself/herself wronged by a superior authority, he/she should merely send a regular representation/letter to the concerned authority which should be sufficient, however wherein a person feels aggrieved or wronged by the actions of a superior, he/she should move a Statutory Complaint, such as matters related to promotion, CRs, disciplinary/administrative issues, non-application or wrong-application of an existing policy, wrong interpretation of a policy by a superior authority etc. The examples above are illustrative and not exhaustive. The Services HQ and the Ministry also need to follow a universal, stable and non-discriminatory approach on the subject and there should never arise a case wherein a complaint on a particular subject is declared untenable for one individual but accepted for another, or when a wrong stand is taken before a Court that the person should have exhausted his statutory remedies fully knowing that the said remedies do not apply in matters such as policy. In matters which are clearly covered under statutory remedies, tenability must be a rule and rejection based upon untenability an exception.

4.2.9 “Outside” members of Selection Boards and procedure thereon:

It has been requested by the Ministry that concerns have been expressed by officers of the defence services that a closed door system of conducting selection boards leads to dissatisfaction and lack of transparency giving rise to doubts and also rumour-mongering at times. The Committee has consequently been requested to ensure the presence of a senior Civilian officer, either from the MoD or the DoPT to become a Member of the board. The Services on the other hand state that there is already a

system of “observers” in selection boards which according to them is appropriate. It has however been spelt out that the observers are from within the services itself.

We do not feel that having civilian members of selection boards would serve any fruitful purpose, since firstly, to initiate the same many amendments in rules and time tested procedures would have to be carried out and, secondly, civilian officers anyway would not have any role in analysis of military expertise of the officers under consideration for promotion. In any case, the boards are approved through channels in the Ministry and any grave incoherence can always be pointed out or taken cognizance of by the Ministry if so deemed appropriate. However we do find weight in the Ministry’s call for greater transparency in Selections and hence deem it appropriate to recommend that there should be a provision of at least two observers from outside the service in Selection Boards. For example, in boards concerning the Army, there must be two observers from the Air Force or the Navy or even civilians who should truthfully record their observations on file after each board. Besides ensuring greater transparency, this would also ensure more faith in a closed door system of selection. There should be no reason for any objection on this arrangement, since, as projected, if all correct practices and procedures are being followed in all boards, then such methods of more transparency should be rather welcomed to dispel all doubts of the environment.

Another issue of concern regarding the procedural aspect of selection boards is that we find that the time-frame allotted to Members of the Board for considering relevant profiles of officers under consideration, especially to the first Selection Grade rank, is quite less. The argument that Members of the Board are senior officers and may not have optimum time, is not the correct line of action. It must be realized that no amount of time could compensate the objectivity and robustness of the system since we are, after all, dealing with careers and futures of officers of the defence services. We cannot be expected to agree to the proposition that adequate time is not spent on the futures of our officers for the reason of making time-frames comfortable for senior officers. We are fully sanguine that such views are not shared by the top brass of the defence services who would be more than willing to go an extra mile to ensure greater acceptability of the selection process. Convenience cannot override justness.

It is also brought to our notice that board results are not being declassified in time as prescribed by policy which leads to unnecessary heartburn and rumours. It also renders impetus to the perception of 'adjustments' being carried out in board results. This is best avoided.

In view of the above, the committee recommends the following:

(a) Having civilian members of selection boards is not agreed to, however minimum two observers in selection boards must be compulsorily from outside the service, that is, either from the sister services or civilians. The observers must truthfully pen down their observations on board proceedings without influence, fear or favour.

(b) The Members of Selection Boards, especially for the first Selection Grade rank, where the number of officers being considered is quite high, should spend more time deliberating over profiles and at least an extra day should be added for undertaking the above. Profiles of officers may not be rushed through.

(c) Board results must always be declassified within the prescribed time frame so as to obviate any perception of wrongdoing amongst the environment. It may be understood that such delays almost always result in drawing of adverse inference against the establishment.

CHAPTER

V

MATTERS CONCERNING MILITARY JUSTICE AND REFORMS THEREON

5. MATTERS CONCERNING MILITARY JUSTICE AND REFORMS THEREON:

The Service Acts of the Indian military were enacted in the 1950s- the Army and Air Force Acts in 1950 and the Navy Act in the year 1957. The Indian Coast Guard Act was enacted in the year 1978.

The Indian Military Acts, enacted soon after independence, reflected the mindset of a force of occupation and were modelled on the provisions of the Crown, and ironically while the master or parent laws progressed and moved with the times, the basic structure of Indian Military laws remained the same, except a few cosmetic changes or amendments forced by decisions of Constitutional Courts. The changes actually did not come as a way of introspection or desire to be abreast with global practices, but were forced and reluctantly adopted. Though some are quick to point out the outdated laws on the civil side, one cardinal distinguishing feature is ignored, and that is, the independence of judiciary and separation of powers in the civilian set-up in letter and spirit, which, even as on date, remains a far call in the military. Moreover, laws on the civil side have remained under the constant and consistent gaze of the High Courts and the Supreme Court as a result of which the interpretation has moved progressively with the times and in conformity with the requirements of the principles of fair-play and judiciousness. In fact, as our interaction with all wings of the forces would prove (See **Para 4.1.6**), the concept of separation of powers and the notion of justice, to this date, is hazy in the minds of even very senior officers, except those who are legally qualified, many being under the misguided impression that Courts and Tribunals are some kind of extension of the executive or the official set-up. Of course, if justice is not just done but also seen to be done in the military, with an essence of independence and fairness patently experienced by persons under trial or facing a legal process, litigation would be drastically reduced.

At the first glance, the Judge Advocate General's department- the JAG branches of all three services, seem woefully understaffed as compared to the military set-up of other democracies. There is much *ad hocism* at play too, for example, the Indian Air Force does not even have a permanent cadre for JAG with officers being culled out from various branches. It is not healthy to observe that even decades after our

independence, we have not been able to constitute a permanent cadre of JAG for our Air Force. In the Army, keeping in view the heavy engagement, it would have been desirable to cater for JAG representation down to at least the Brigade level to take care of day to day legal requirements and advice not only to Commanders and the formation but also to the body of troops. But expansion, it seems, is held hostage to red tape and outdated cadre projections and revisions which have not merged well with the reality that stares us in the face. There of course are other conceptual flaws in the system of military justice in India which we shall tackle in the succeeding part of this Chapter.

As is commonly known, Article 14 of the International Covenant on Civil and Political Rights (ICCPR), 1966, which is also applicable to military tribunals, provides that every person shall be entitled to a fair and public hearing by a **competent, independent and impartial** tribunal established by law. India had acceded to the ICCPR on 10-04-1979.

Though the system has been trying its best to resist the question, but how far is the military justice system impartial and independent from Command influence? How far is it competent when the members of the jury are not trained in law?

Though the same has been reiterated elsewhere in this Report, it was in **Writ Petition 4903/1981 Lt Col Prithi Pal Singh Bedi Vs Union of India decided on 25-08-1982**, that the Supreme Court observed as under:

“45. Reluctance of the apex court more concerned with civil law to interfere with the internal affairs of the Army is likely to create a distorted picture in the minds of the military personnel that persons subject to Army Act are not citizens of India. It is one of the cardinal features of our Constitution that a person by enlisting in or entering armed forces does not cease to be a citizen so as to wholly deprive him of his rights under the Constitution. More so when this Court held in *Sunil Batra v. Delhi Administration & ors.* (sic) that even prisoners deprived of personal liberty are not wholly denuded of their fundamental rights. In the larger interest of national security and military discipline Parliament in its wisdom may restrict or abrogate such rights in their application to the Armed Forces but this process should not be carried so far as to create a class of citizens not entitled to the benefits of the liberal spirit of the Constitution. Persons subject to Army Act are gritty and wholly

unbiased. **A marked difference in the procedure for trial of an offence by the criminal court and the court martial is apt to generate dissatisfaction arising out of this differential treatment.** Even though it is pointed out that the procedure of trial by court martial is almost analogous to the procedure of trial in the ordinary criminal courts, we must recall what Justice William O'Douglas observed 'that civil trial is held in an atmosphere conducive to the protection of individual rights while a military trial is marked by the age-old manifest destiny of retributive justice. Very expression 'court martial' generally strikes terror in the heart of the person to be tried by it. And somehow or the other the trial is looked upon with disfavour.' (1) In Reid v. Covart, (sic) Justice Black observed at P. 1174 as under;

"Courts-martial are typically ad hoc bodies appointed by a military officer from among his subordinates. They have always been subject to varying degrees of "command influence". In essence, these tribunals are simply executive tribunals whose personnel are in the executive chain of command. Frequently, the members of the court-martial must look to the appointing officer for promotions, advantageous assignments and efficiency ratings - in short, for their future progress in the service. Conceding to military personnel that high degree of honesty and sense of justice which nearly all of them undoubtedly have, the members of a court-martial, in the nature of things, do not and cannot have the independence of jurors drawn from the general public or of civilian judges."

...Army is always on alert for repelling external aggression and suppressing internal disorder so that the peace loving citizens enjoy a social order based on rule of law; the same cannot be denied to the protectors of this order. And it must be realized that an appeal from Caesar to Caesar's wife- confirmation proceeding under section 153, has been condemned as injudicious and merely a lip sympathy to form. The core question is whether at least there should be one appeal to a body composed of non-military personnel and who would enjoy the right of judicial review both on law and facts as also determine the adequacy of punishment being commensurate with the gravity of the offence charged...**fair play and justice cannot always be sacrificed at the altar of military discipline.**

There have been many positive strides in the field of military justice reform all over the world, especially in democracies and nations following the Westminster model, but our system, sadly, remains stuck in a time-warp. This is not to say that this Committee is favouring drastic and revolutionary or sudden changes in the existing dispensation, but we are pained to observe that even a start has not been initiated, with all wings of the defence services not being on the same page and perhaps more worried about individual turfs and 'vacancies' than growth of military law as a whole or dispensation of justice to the men and women who serve us in uniform. Needless to state, even a serious effort has not been made for introducing a common/joint military code, with service-specific sections to suit such service-specific requirements, leading to wide disparity as to how justice is dispensed. All democracies have standing Courts Martial but we still have *ad hoc* juries comprising non-judicial and non-legally trained members and not even a permanent Courts Martial structure which may provide some stability to the entire system. It is surprising to hear whispers of comparison of our system with that of our neighbouring nations. It however needs no emphasis that in our true democracy characterized by separation of powers and rule of law, neighbouring nations can hardly be cited as the benchmark. The judicial system of India, especially the higher judiciary, has been the trailblazer for protection of rights of citizens and amongst the best in all democracies, our system of military justice therefore also needs to compete with the best and not lag behind or even fall below the expectations of the public which looks at the defence services as organisations which practice inherent fairness.

Over the years, all over the globe, there has been steady change in guaranteeing independence and protection from interference and undue influence in dispensation of military justice. The landmark decision of the **Supreme Court of Canada in *R v Généreux*, [1992] 1 S.C.R. 259** (Official gist attached as **Annexure-74**) was the path breaker in this regard. In this case, it was held that though a parallel military justice system was constitutionally valid, it still left military members of the Courts Martial vulnerable to interference from the official establishment. The Supreme Court of Canada found that under the then existing military justice provisions of Canada, the right to an independent and fair tribunal under the Canadian Charter of Rights and Freedoms was violated. We may pause here and say that the Constitution of India also

guarantees the same, if not greater, independence to judicial functioning and fair trial, which sadly, in our case is lacking under the current scheme of things. While proper changes were initiated in Canada after the decision, we, in India, have not woken up to the call of the times or even to the expectations of the society or even those of the members of the defence services despite being one of the most judicially evolved nations in the world. The following observations from this landmark decision, which has direct relevance to the system followed in India, merit special reproduction:

“The Judge Advocate General, who had the legal authority to appoint a judge advocate at a General Court Martial, is not independent of but is rather a part of the executive. The Judge Advocate General serves as the agent of the executive in supervising prosecutions. Furthermore, under the regulations in force at the time of the trial, the judge advocate was appointed solely on a case by case basis. As a result, there was no objective guarantee that his career as military judge would not be affected by decisions tending to favour an accused rather than the prosecution. A reasonable person might well have entertained an apprehension that the person chosen as judge advocate had been selected because he had satisfied the interests of the executive, or at least not seriously disappointed executive expectations, in previous proceedings.

The executive thus had the ability to interfere with the salaries and promotional opportunities of officers serving as judge advocates and members at a court martial. Although the practice of the executive may very well have been to respect the independence of the participants at the court martial in this respect, this was not sufficient to correct the weaknesses in the tribunal's status.

Third, certain characteristics of the General Court Martial system were likely to cast doubt on the institutional independence of the tribunal in the mind of a reasonable and informed person. While the idea of a separate system of military tribunals obviously requires substantial relations between the military hierarchy and the military judicial system, the principle of institutional independence requires that the General Court Martial be free from external interference with respect to matters that relate directly to the tribunal's judicial function. An examination of the legislation governing the General Court Martial reveals that military officers, who are responsible to their superiors in the Department of Defence, are intimately involved in the proceedings of the tribunal. In particular, it is unacceptable that the authority that convenes the court martial, i.e. the executive, which is responsible for appointing the prosecutor, should also have the authority to appoint members of the court martial, who serve as the triers of fact. The appointment of the judge advocate by the Judge Advocate General also undermines the institutional

independence of the General Court Martial. The close ties between the Judge Advocate General, who is appointed by the Governor in Council, and the executive, are obvious. To comply with s. 11(d) of the *Charter*, the appointment of a military judge to sit as judge advocate at a particular General Court Martial should be in the hands of an independent and impartial judicial officer.”

In the landmark case of **Findlay Vs The United Kingdom, pronounced by the European Court of Human Rights on 25-02-1997** (Available at [http://hudoc.echr.coe.int/eng?i=001-58016#{\"itemid\":\[\"001-58016\"\]}](http://hudoc.echr.coe.int/eng?i=001-58016#{\)), which led to big-ticket reforms in the United Kingdom, the following was observed regarding the then existing provisions in the United Kingdom for Courts Martial, which of course, are still in vogue in India:

“72. The Commission found that although the convening officer played a central role in the prosecution of the case, all of the members of the court-martial board were subordinate in rank to him and under his overall command. He also acted as confirming officer, and the court martial’s findings had no effect until confirmed by him. These circumstances gave serious cause to doubt the independence of the tribunal from the prosecuting authority. The judge advocate’s involvement was not sufficient to dispel this doubt, since he was not a member of the court martial, did not take part in its deliberations and gave his advice on sentencing in private. In addition, it noted that Mr Findlay’s court-martial board contained no judicial members, no legally qualified members and no civilians, that it was set up on an ad hoc basis and that the convening officer had the power to dissolve it either before or during the trial. The requirement to take an oath was not a sufficient guarantee of independence.

Accordingly, it considered that the applicant’s fears about the independence of the court martial could be regarded as objectively justified, particularly in view of the nature and extent of the convening officer’s roles, the composition of the court martial and its ad hoc nature. This defect was not, moreover, remedied by any subsequent review by a judicial body affording all the guarantees required by Article 6 para. 1 (art. 6-1), since the confirming officer was the same person as the convening officer, and the reviewing authorities were army officers, the second of whom was superior in rank to the first. The ineffectiveness of the post-hearing reviews was further underlined by the secrecy surrounding them and the lack of opportunity for Mr Findlay to participate in a meaningful way.

* * *

75. The question therefore arises whether the members of the court martial were sufficiently independent of the convening officer and whether the organisation of the trial offered adequate guarantees of impartiality.

In this respect also the Court shares the concerns of the Commission. It is noteworthy that all the members of the court martial, appointed by the convening officer, were subordinate in rank to him. Many of them, including the president, were directly or ultimately under his command (see paragraph 16 above). Furthermore, the convening officer had the power, albeit in prescribed circumstances, to dissolve the court martial either before or during the trial (see paragraph 40 above).

76. In order to maintain confidence in the independence and impartiality of the court, appearances may be of importance. Since all the members of the court martial which decided Mr Findlay's case were subordinate in rank to the convening officer and fell within his chain of command, Mr Findlay's doubts about the tribunal's independence and impartiality could be objectively justified (see, mutatis mutandis, the Sramek v. Austria judgment of 22 October 1984, Series A no. 84, p. 20, para. 42).

77. In addition, the Court finds it significant that the convening officer also acted as "confirming officer". Thus, the decision of the court martial was not effective until ratified by him, and he had the power to vary the sentence imposed as he saw fit (see paragraph 48 above). This is contrary to the well-established principle that the power to give a binding decision which may not be altered by a non-judicial authority is inherent in the very notion of "tribunal" and can also be seen as a component of the "independence" required by Article 6 para. 1 (art. 6-1) (see, mutatis mutandis, the Van de Hurk v. the Netherlands judgment of 19 April 1994, Series A no. 288, p. 16, para. 45).

78. The Court further agrees with the Commission that these fundamental flaws in the court-martial system were not remedied by the presence of safeguards, such as the involvement of the judge advocate, who was not himself a member of the tribunal and whose advice to it was not made public (see paragraphs 45-46 above), or the oath taken by the members of the court-martial board (see paragraph 35 above).

79. Nor could the defects referred to above (in paragraphs 75 and 77) be corrected by any subsequent review proceedings. Since the applicant's hearing was concerned with serious charges classified as "criminal" under both domestic and Convention law, he was entitled to a first-instance tribunal which fully met the requirements of Article 6 para. 1 (art. 6-1) (see the De Cubber v. Belgium judgment of 26 October 1984, Series A no. 86, pp. 16-18, paras. 31-32).

80. For all these reasons, and in particular the central role played by the convening officer in the organisation of the court martial, the Court considers that Mr Findlay's misgivings about the independence and impartiality of the tribunal which dealt with his case were objectively justified."

The Report of the **United Nation's Special Rapporteur** transmitted to the **General Assembly** by the **UN Secretary General** (Report A/68/285 dated 07-08-2013) specifically dealing with the independence of judges and lawyers in a military backdrop, which is appended with this Report as **Annexure-75**, is of special significance, as to the following:

"17...It is thus commonly understood that human rights standards and principles relating to the administration of justice- **such as the principle of equality before courts and tribunals, the right to be tried by a competent and regularly constituted court using established legal procedures, the right to an effective remedy, the principle of legality and the right to a fair trial fully apply to military courts.**

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28. National legislation usually states that military judges should possess the same legal education and training required of civilian judges. In countries where military tribunals are administered by the ordinary justice system, civilian judges may be assisted by military personnel.

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35. **The concept of the independence of the judiciary is derived from the basic principles that substantiate the rule of law, in particular the principle of the separation of powers, which constitutes the cornerstone of an independent and impartial justice system.** In paragraphs 18 and 19 of its general comment No. 32, the Human Rights Committee considered that the notion of a competent, independent and impartial tribunal established by law set out in article 14, paragraph 1, of the International Covenant on Civil and Political Rights designates a body, regardless of its denomination, that is established by law, is independent of the executive and legislative branches of government or enjoys in specific cases judicial independence in deciding legal matters in proceedings that are judicial in nature. The Committee underscored that the requirement of competence, independence and impartiality of a tribunal is an absolute right that is not subject to any exception.

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38. The principle of the separation of powers requires that military tribunals be institutionally separate from the executive and the legislative branches of power so as to avoid any interference, including by the military, in the administration of justice. In this regard, principle 13 of the draft principles governing the administration of justice through military tribunals states that military judges should have a status guaranteeing their independence and impartiality, in particular in respect of the military hierarchy. In the commentary to this principle, it is noted that the statutory independence of military judges vis-à-vis the military hierarchy must be strictly protected, avoiding any direct or indirect subordination, whether in the organization and operation of the system of justice itself or in terms of career development for military judges.

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41. In *Martin v. the United Kingdom*, the European Court of Human Rights held that...In this judgement, the Court makes reference to *Findlay v. the United Kingdom*, with respect to which the Court considered that there were fundamental flaws in the court-martial system in the United Kingdom of Great Britain and Northern Ireland because of the role of the convening military officer.

42. With regard to convening officers, the Special Rapporteur notes that, depending on their role and function, they can have a considerable impact on the independence and impartiality of military tribunals, for example in cases where the convening authority has the power to dissolve a tribunal or otherwise influence the outcome of a trial. The role and functions of convening officers, and safeguards against any such interference, must be clearly defined by legislation so that, on the one hand, convening officers can act independently from external pressure and, on the other hand, they are prevented from acting in ways that might hinder the independent and impartial administration of justice.

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94. **Domestic legislation should include specific guarantees to protect the statutory independence of military judges vis-à-vis the executive branch and the military hierarchy and to enhance, in line with the Bangalore Principles of Judicial Conduct, the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary.**

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96. **The role and functions of convening officers and safeguards protecting the independence and impartiality of military tribunals must be clearly defined by legislation so that convening officers can, on the one hand, act independently from external pressure and, on the other hand, be prevented from acting in ways that might hinder the independent and impartial administration of justice.”**

Mr **Eugene R Fidell**, President Emeritus of the National Institute of Military Justice (NIMJ), and former Judge Advocate of the US Coast Guard, in his published article on International developments in Military Law (Canadian Criminal Law review: 17 CANCRIMLR 83) had the following to opine on the universal applicability of basic norms of justice in a military environment, albeit still resisted by certain nations:

“...Judicial independence is one of the overarching themes of current international military justice. Canada of course led the way in this field with *Généreux*. That case was followed by the European Court of Human Rights in *Findlay* and its progeny. But these landmark cases have not been universally influential. For example, smaller, less well-developed countries have argued that these cases are inapplicable to their situations, although only recently the Supreme Court of Nepal required that country's military justice scheme to be overhauled on *Findlay* and *Généreux* grounds as a result of public interest litigation in which I participated as an *amicus curiae*...”

Interestingly, while some nations have willingly embraced the march towards reconfiguration of military justice with modern democratic principles, we have lagged behind, nay, lost the race. Since Mr Fidell talks about it in the citation above, we would amplify that there has been enlightenment in this area even in smaller nations like Nepal, and we are tempted to gainfully reproduce here some passages from the decision of the **Supreme Court of Nepal** in **Writ 65-WS-0010 *In re: Order of Mandamus be issued declaring null and void provisions of the Army Act, 2006*** decided on 30-06-2011:

...Maintaining chain of command of the military organization and ensuring discipline and honour of the armed force is not the only subject matter that should be incorporated in the military justice system; **providing military personnel with the opportunity to express their grievances in a proper manner and obtaining judicial remedy is also one of the**

goals. Therefore, while reviewing the structure and jurisdiction of Courts Martial, such types of judicial mechanism also should be kept in mind. **This matter is also crucial from the perspective of creating an environment of trust and allegiance among military force towards the military justice system.....**It is not enough just to talk about the independence and fairness of a tribunal, the investigations and prosecutions must similarly also be independent, fair and effective. If an institution does not possess expertise on its own field, then it is not possible for it to accomplish the expected task. In the context of military justice, investigation, prosecution and defence in relation to an offence falling within the jurisdiction of Courts Martial have to be effective, along with an effective Court Martial. There should not be any possibility of direct interference by army officers in these processes. If the terms and conditions of service, and the regulation of human resource serving in such a mechanism, are the same as that of other military personnel, it is not possible for the mechanisms to perform their tasks in a fair and independent manner.....**The act of empowering the same authority or mechanism with the power to be involved in the investigation, prosecution, defence and adjudication of a case undermines the military justice system itself. Such a judicial system cannot be imagined in a civilized and democratic country that is committed to the rule of law.....**Further, the provisions that subject decisions or orders rendered by a General Court Martial or a Summary Court Martial to approval by military authority ultimately show that decisions or orders rendered by a General Court Martial, Summary General Court Martial, Summary Court Martial and District Court Martial, with the exception of the Special Court Martial, all fall under the control of the army administrative organization. **A judgment delivered by a judicial body can only be reviewed through a judicial procedure, and no other institution or authority may exercise a power to confirm or nullify such decision. This is what we call the universal character of the judicial decision.....A system that authorizes military officers to confirm or nullify judgments or orders rendered by trial level Courts Martial cannot be justified by any argument.....**In the absence of subject-wise expertise of law and justice, it is not possible to impart justice.....The trend that has been emerging is to constitute tribunals with a majority of civilian judicial authorities who are able to impart justice in an independent and impartial manner, rather than with a majority of military and administrative officers...

Suffice it to say, that whatever may be put up in defence of the existing dispensation, to the eye of even a layperson, the current system of military justice does not meet the basic norms of independence or separation of powers guaranteed by the Constitution of India. Swiftmess or quickness of trial or a high rate of conviction may reflect procedural

efficiency but not judicial soundness of the system. Most of the democracies have moved on, but we are clinging on to a system long aborted by others. For example, though the US has a jury system, it also has proper military judges, in the United Kingdom, the Judge Advocate General (JAG) is a proper Judge functioning under the Ministry of Law & Justice and is a civilian (though he can be a former Member of the Military). Service in the JAG branch in India, is judicial service theoretically [see Paragraph 82(f)(i) of Regulations for the Army, 1987] but in practice the officers are merely functioning as Advisers without any judicial or executive role. Independent directorates of prosecution have been established in many nations and forays have been made to ensure that there is no conflict of interest in dispensation of justice in the Military. Regrettably, introspection in this regard is lacking in our country and we seem unwilling to exert and work hard towards betterment and robustness of military justice which would not only boost confidence but also reduce litigation within and outside the military. One strikingly disorienting feature of Courts Martial is also that of the 'judgement' (reasons in support) that is to be rendered in support of a conviction or acquittal. **Many questions arise-** We wonder as to how the Judge Advocate has been authorized to do so by the Rules? [For example, See Rule 62(1) of Army Rules, 1954] Does this not affect his/her independence or neutrality? What if the Judge Advocate renders an advice of acquittal to the jury but the jury decides on conviction, would it be proper then for the Judge Advocate to write the reasons for conviction which would be against his/her very own thought-process? How can the Presiding Officer of the Court Martial be expected to record reasons when he/she is not legally trained? Why is there a provision that the Court Martial, if unable to reach the conclusion of 'guilt', could refer the issue to the 'Confirming Authority' for an opinion? [See Rule 62(3)]? When the Confirming authority remains so intimately involved in the evidence, the prosecution, the jury and the process of Court Martial, how could separation of powers be expected and what then would remain of the pre-confirmation and post-confirmation provisions or petitions? Isn't it correct that Members of Courts Martial and even the Judge Advocate keep in touch with, and keep seeking clarifications on various subjects from the formation which is responsible for convening the Court Martial or even from other officers of the JAG branch? Members of the Court Martial and even the Judge

Advocates are expected to operate as a self-contained institution, like Judges on the civil side, without being influenced by actions, thoughts or ideas outside the four corners of the Courtroom. Whatever inputs that are required are to be provided from the two sides- prosecution and defence within the Courtroom and not from external (official) entities. The practical ground reality clearly reflects a judicial overreach of another kind, where the Members of the Court themselves are neither trained, nor legally educated nor confident and depend upon extraneous influences. Sadly, this situation is also supported by Statutory Rules. For example, to take the case of the Army, Rules 49, 51 and 53 of the Army Rules, 1954, provide for objections and pleas by the accused but in all these rules, the matter can be reported/referred by the Court Martial to the convening/confirming authority which again reflects a conflict of interest. In fact, as also stated above, the Court Martial, rather than being a standalone, independent, self-contained confident institution acts more as a wing or an extension of the convening authority, thus resulting in an overreliance of the entire system of Military Justice on the official side rather than maintaining a balance by being independent, dispassionate and impartial. So much so, that the Judge Advocate General, who (and whose officers) is supposed to independently advise the system of Military Justice is also the Adviser to the Chief of the Army Staff and is even supposed to assist the Adjutant General in matters related to discipline (See Regulation 33 of the Regulations for the Army, DSR). So on one hand, the JAG branch is supposed to assist in maintenance of discipline, on the other hand the same branch is supposed to render independent legal/quasi-judicial advice when disciplinary proceedings are initiated. **Though we are not for a minute suggesting that the JAG branch or even other cogs of the official machinery are unfair towards their responsibility, but then, we are again tempted to reproduce the oft repeated phrase from R v Sussex Justices, Ex-parte McCarthy (1923) All England Reporter 233, wherein Lord Chief Justice Hewart of the King's Bench recorded that "justice should not only be done, but should manifestly and undoubtedly be seen to be done". It is not for the establishment to feel satisfied by fairness but for the persons facing the process of law.**

Rationalizing by way of justifying that "all is well" or shutting the eyes to the hazards of *ad hocism* or brushing aside the entire range of issues referred above, is hardly the

solution and it is high time we take the bull by the horns and get down to the brasstacks by discarding our respective comfort zones and challenging the *status quo*. The final result of such an exercise may decrease the intensity of clout concentrated in some power-centers but would be in the overall fitness of things and the balance would shift towards objectivity, fairness and judiciousness, even when observed from the ringside. Every limb of Military Justice, therefore, needs to be weighed purposefully against the backdrop of Constitutional principles, international standards, best practices and democratic norms.

Though we are dealing with reduction of litigation and also strengthening the systems of redressal of grievances, we would not like to charter into territory of an overhaul of the system which may at places require legislative intervention, however we would like to ensure that the Ministry of Defence and the Defence Services render adequate thought to the aspects of Military Justice Reform listed out in succeeding paragraphs to ensure a future of a just and proper judicial process for our men and women in uniform. The issue has long been kept on the backburner and adequate effort has not gone into it but we would like to prompt all concerned to at least make an honest start with a Study Group of stakeholders and independent experts to analyze all modalities and carry them forward to logical conclusion. We would like to act as catalysts to bring all stakeholders on the table since it seems that there has been resistance in the system in taking the exercise of judicial reforms heads on.

Some out of the proposed changes being listed out in following paragraphs, however are recommended to be incorporated and put into motion forthwith since the same do not require any change in the existing dispensation.

5.1 CHANGES THAT CAN BE INCORPORATED FORTHWITH WITHOUT LEGISLATIVE INTERVENTION:

5.1.1 Permanent infrastructure for Courts Martial:

This is a step towards Standing Courts Martial, which, in the future should be the ideal aim.

Currently, Courts Martial in India are *ad hoc* bodies/juries comprising Members who are not legally or judicially trained but who sit in judgement over trials which are essentially criminal trials in nature. The Courts Martial, may be assisted by a Judge Advocate, depending upon the type of Court Martial, who is not a direct part of the decision-making process though, and whose role is only advisory even related to the culpability of the accused facing a trial.

An *ad hoc* system of Courts Martial has many disadvantages since it does not inspire confidence in the public. There is no permanent seat, it may sometimes be convened in places where the defence and the prosecution may be at a loss to reach and also as to arrange proper legal help/aid, it may be convened at a place lacking infrastructure, it may result in lack of transparency if held in a restricted area, there may be no access to journals and reference material, it may lead to delays etc.

In case permanent infrastructure or seat is identified or even certain military stations earmarked for the purposes of holding Courts Martial in all Commands, it may be the closest we could get to a Standing Court Martial system under and within the scope of the current dispensation and that too without the requirement of any legislative change. In addition to the above, the JAG Branch could also maintain a list of all legally qualified serving officers of the regular forces in each Command who could be appointed as Members of Courts Martial on a voluntary basis whenever required as far as practicable. This would at least configure the system to the very basic requirement of a rudimentary knowledge of law by persons deciding upon the guilt or otherwise of the accused before them.

The advantages of such a system of a permanent infrastructure of Courts Martial, are manifold:

- There would be better availability of legal assistance/counsel for both sides.
- There would be access to better infrastructural facilities since permanent Court Martial rooms would be located in major stations in all Commands.
- There would be stability in the entire system and even dedicated staff could be attached or detailed whenever required for trials.

- There would be access to books, journals and all kinds of ancillary legal requirements.
- Delays and adjournments due to non-availability of administrative backup, counsel and secretarial assistance etc would be avoided.
- Since the location would be accessible, the movement of witnesses, Members, Judge Advocate etc would be smoother.
- Would give a fillip to transparency and obviate *ad hocism* to a certain extent till the ultimate aim of Standing Courts Martial is realized.

The Committee hence recommends as follows:

(a) Two to three stations in all Commands of all Services may be identified for creation or readying of permanent Court Martial rooms or infrastructure in order to give effect to the above. Administrative details can be worked out as per the convenience of the Services. **In case any Service has any inhibitions of effectuating the said arrangement, the other Services may immediately do so, as soon as practicable, without waiting for a co-extensive initiation of the system by all Services.**

(b) A list of legally qualified officers of the Regular forces shall be maintained in each Command and in the office of the JAG of the three services so as to detail them on Court Martial duty on a voluntary basis.

5.1.2 Convening authority and its influence on Military Justice

The lack of independence in military trials is a major source of litigation and has led to strictures from Courts as well as experts. There is lack of confidence in the system with the Convening authority appointing or having a say in all aspects related to a Court Martial and also its manning and prosecution. Even the JAG department which is concerned with rendering advice is not independent of the 'interested party', which of course, is the official establishment in this case. The system has been negatively commented upon throughout the ages but to no practical avail. There is a tendency of interference also because, as stated elsewhere in this Report, the basics of separation of power are not clear to many officers of the military. Even after a verdict is rendered, the Acts provide for power to superior military authorities, who are of course a part of the executive, to revise the sentence or findings of the Court Martial, a system unheard of on the civil side. All main organs of the Court Martial are in fact subordinates of the

authority which convenes the Court Martial and which is naturally aiming for conviction of a person on trial. There are visible and invisible strings of the military justice process intertwined with the Chain of Command which cannot be denied by any person with even a basic modicum of legal knowledge.

Proving that this concern is not new, the following extracts from “*Military Justice System in India and Challenges in the 21st Century*”, IS Singh, **Mil LJ June 2011 A1** merit attention in this regard:

“...Under the present system in India, the convening authority of a court martial not only decides the charges and types of court martial by which the charges are to be tried but also selects and appoints members of the court martial from amongst his subordinate officers. In most cases, the Deputy Judge Advocate General (Dy JAG) on whose legal advice he seeks to determine the charges, the members of the court martial, the trial judge advocate and the prosecutor, are all his subordinate officers subject to his command influence as they look upto him for promotion and perks. In most cases, the convening authority happens to be the confirming authority as well, thereby also giving him the power to alter the finding and sentence of the court martial. All this makes the command influence of the convening officer over the court martial all too pervasive. Originally, the British and American system of military justice followed almost the same model as ours but gradually, succumbing to the great resentment from the civil society and human rights groups, both the countries have brought about sweeping changes in this regard, thereby making the system completely free from the command influence. Though India may not yet be fully ready for the sudden switchover to the American or British model, but in order to minimise the probability of undue command influence and bias, it may be suggested that the members of the court martial and the judge advocate should be drawn from a Command different from the one where the court-martial is convened or held. Apparent and perceived impartiality of a judge is the basic principle of natural justice on which all judicial systems in modern era function...

...Perhaps the most valid criticism against the present military judicial set up is that the JAG or one of his deputies frames the charges, advises the prosecution of the accused and then one of his subordinates conducts the court-martial as trial judge advocate representing him (the JAG) at the court martial. Subsequently, another subordinate officer of the JAG reviews the court-martial proceedings. Thus, in a sense, the JAG acts as the “accuser or the prosecutor”, a ‘judge’ and then also reviews his own “judgement” – all in the same case. In such a scenario, there would be a natural tendency on part of the trial judge advocate or the officer reviewing

the proceedings to wittingly or unwittingly uphold the charges framed by his superior officer whom he looks upon for promotion and perks. Even if in practice no such tendency is exhibited, there would always remain in mind of the accused a lurking suspicion of such a 'bias'. In the administration of justice, whether by a court, a body or a person who is duty bound to act judicially, the fundamental principle of criminal jurisprudence demands that there should be absolutely no scope for doubt regarding the purity of the administration of justice and any person who has to take part in it should not be in such a position that he might be suspected of being biased..."

The Committee, in this respect strongly recommends the following:

- (a) All three Services must faithfully and honestly devise ways to ensure that there is no Command influence on the system of military justice and that all elements and wings of military justice, including Courts Martial, are not directly in the chain of convening or confirming authorities, by formulating ways and means within the existing system to avoid conflict of interest till legislative reforms materialize.
- (b) The Presiding Officer and majority of Members must be of a formation outside the influence of the Convening authority.
- (c) Revision should be an exception, and if at all, it may only be exercised when the Court Martial does not conform to the minimum laid down limits of punishment.
- (d) There should be no sword of administrative action hanging on any Member, prosecutor or defending officer related to their performance in a Court Martial, except in case of misconduct such as corruption.
- (e) **It must be always remembered that the aim of Courts Martial is to ensure justice, not conviction.**

5.1.3 Short Training capsules for JAG Officers outside the 'system':

Various Courts have adversely commented upon lack of proper training of JAG officers as well as legal training of Members of Courts Martial.

The latest decision of the Kolkata Bench of the Armed Forces Tribunal in **Commander Harneet Singh Vs Union of India, OA 30/2013 decided on 21-08-2015**, has also called for proper training to JAG officers in interpretative, Constitutional and Administrative Law.

Though training programmes are available in Service institutions, we feel that exposure to JAG officers needs to be configured with the actual judicial and legal functioning of civil and criminal courts so as to gain proper well-rounded knowledge rather than remain inward looking within the organization. This is not to say that JAG officers are not trained well but such an exposure to judicial practices would definitely lead to better all-round development of the JAG cadre.

To ensure the above, the committee strongly recommends that the Ministry or the Defence Services immediately coordinate with the National Judicial Academy, Bhopal, or with any State Judicial Academy, to tie-up for capsule courses for JAG officers within the first four years of commissioning (after their infantry attachment and the JAG Young Officers' Course or equivalent in the other two services, if any) on the lines of courses being run for Members of the State Judicial Services. The capsule course should be at least of 8 weeks length. Court visits to District & Sessions Courts to understand the nuances of a trial as well as the High Court must also be arranged for young JAG officers to give them exposure to judicial practices and also ingrain in them the concept of independence of judicial functioning in a democracy.

5.1.4 Summary Courts Martial

As is widely known, many cases in the High Courts and the Armed Forces Tribunal relate to Summary Courts Martial (SCM) of the Army. The percentage is very high when considered at the backdrop of the total number of cases pending with regard to Courts Martial. Even numerically speaking, the number of Summary Courts Martial conducted is not a figure that can be easily ignored (500 in the year 2012, 493 in 2013 and 471 in 2014). There is no provision of SCM in the Navy or the Air Force and the concept has been arguably perceived draconian by many-an-expert over the ages though it has been defended by the Army as an important tool for maintaining and ensuring discipline. Of course, it might have become a very important tool for maintaining discipline due to its usage over the ages with which the system has got used to, but the question arises whether it should be allowed to be so used in so much of a routine when other viable solutions may be available on the administrative side?

The SCM was essentially meant to be a war time provision for quick dispensation of justice where regular procedures of other forms of Courts Martial or administrative action would hamper speed of dispensing a punishment. **No judgement or reasons of decision are required to be spelt out in an SCM.** It was a tool for the Commanding Officers to ensure trial in the shortest possible period where time was a major constraint. While it was understandable as a routine recourse during the time when the British Army was an Army of occupation lording over native troops, its rampant use in peace time, especially where the same effect of disciplining troops could be realized by summary punishments/administrative action or when a full fledged trial is practicable in case of major offences, becomes highly questionable. It becomes more controversial in view of the fact that even imprisonment and dismissal from service can be awarded by the Commanding Officer through an SCM and such a provision in this form with such wide powers does not exist in any other democracy including expeditionary forces. For example in the US, an SCM can only be conducted if a person renders his/her consent and notwithstanding the same, there is no power of dismissal available. SCM does not even meet the basic fundamentals of a trial or independence or the principles as laid down by the International Covenant of Civil and Political Rights (ICCPR) since the Commanding Officer performs both the functions of a prosecutor and a judge, there is no availability of a lawyer to the accused or even a legally trained Judge Advocate to advise the Presiding Officer of the trial. The entire procedure is carried out within military units where the principles of natural justice or even basic legal norms are not well known. This must be the only kind of Court Martial in any modern democracy where even a basic judgement or reasons are not recorded though the punishment can be drastic. The ICCPR, in Article 14, calls for a public hearing by a competent, independent and impartial Tribunal. Though it is well known that there is no public hearing in case of an SCM, it is definitely also not independent since it comprises of the Commanding Officer himself, and of course not impartial since the party interested in conviction is the Prosecutor-cum-Judge himself. Article 14 of ICCPR further provides that an accused

shall have the right to counsel of his/her own choice and then the right to communicate with his counsel whereas there is no provision for a Counsel at all in an SCM. No limb of the SCM is legally qualified or trained and there is no system of 'Confirmation'. The almost 100% conviction rate, the culmination of the entire trial within a few minutes in which time fulfillment of the procedure prescribed under rules is not humanly possible, and multiple instances wherein personnel magically end up pleading "guilty", point out to the not-so-robust nature of this system. The post-facto review by the JAG Branch is also procedural in nature with no real potential value.

In view of the above, the Committee recommends that the environment may be sensitized that the provision of SCM should be used sparingly and exceptionally and preferably only in operational areas where resort to a regular trial is not practicable or when summary/administrative action would not meet the requirements of discipline. It may be emphasized that SCM is an exception and not the rule and was not even originally meant to be a peace-time provision or regular recourse. In the times to come, the desirability of even having such a provision on the statute book may be examined with the suitability of a replacement by a more robust system meeting the aspirations of judiciousness and Constitutional norms. We may however caution that we are not, in any manner, underestimating the requirement of discipline in the uniformed services but are simply stating that SCM may not be treated as a routine recourse when other effective tools of enforcing discipline are available.

5.2 THE TOUGH TASK AHEAD:

As conveyed in the introduction of this Chapter in great detail, in **Para 5**, there are no easy answers or solutions for reform of Military Justice. Apart from the recommendations in the preceding paragraphs which could be immediately adopted and implemented without any legislative change, there would be areas in which legislative intervention would be required or major shift in policy by readjustment of administrative guidelines. The Committee feels that all Services must come together and look for workable solutions in the area of military justice reform which has been ignored in the past. The Services HQ must shun differences and personal/service-

oriented gains and losses and identify areas where we need to bring up our system to the best practices followed in all democracies. The underlining force behind the exercise should be independence, being the hallmark of any judicial process and once independence is ensured in letter and spirit, all allied difficulties are bound to disappear, thereby also greatly decreasing complaints and litigation in this regard.

The Committee recommends that a high level Study Group on Military Justice be directed to be constituted by the Ministry of Defence with at least 7 Members, that is, the three JAGs, one officer of the rank of Lt Gen or equivalent to be nominated by the Chiefs of Staff Committee (COSC), one officer of the rank of Joint Secretary/Additional Secretary to Govt of India to be nominated by the Defence Secretary and two law qualified independent experts not being former or current Government counsel or officers. The Study Group may render its report within a period of 6 months which should be followed by time-bound initiation of consultations with the Ministry of Law & Justice to set the legislative process in motion. The Study Group must not shy away from interacting with institutions concerned with judicial reform or research or seeking views from the public.

The Study Group, besides other issues, *inter alia*, must definitely consider the following:

- (a) The desirability of introducing a common code for all Services with service specific offences and a cadre of proper independent Military Judges rather than *ad hoc* juries with Members who are not legally or judicially trained.
- (b) Introducing provisions making military justice independent and totally insulated from influence, with Courts Martial not functioning in the line of perceivably interested parties/authorities.
- (c) The desirability of retaining the provisions of SCM in this time and age and the desirability of rationalizing the types and kinds of Courts Martial. The system of Summary punishments in the Navy may also be analyzed.
- (d) The ways of strengthening of the JAG cadre, its expansion to cater to provisioning of at least one officer till a Brigade level formation, or its commonality amongst the three services.
- (e) Introduction of permanent Standing Courts Martial in the statute.
- (f) Desirability of bifurcating the JAG Branch into one performing traditional functions and the other concerning prosecution by formulation of a 'Department

of Military Prosecution' or trifurcating it to provide for proper military Judges in addition, as prevalent in many democracies.

CHAPTER

VI

MATTERS SPECIFICALLY CONCERNING CIVILIAN EMPLOYEES

6. MATTERS SPECIFICALLY CONCERNING CIVILIAN EMPLOYEES

Our deliberations did not only encompass the grievances and legal issues related to uniformed forces but also the civilian employees of the Ministry of Defence. There can be no two views about the fact that civilian employees have as much important role to play as their uniformed counterparts and deserve full attention of the official establishment with all sensitivity. **While the role and sacrifices of uniformed personnel often get highlighted in the society at large, the civilian staff remain unsung in this aspect.**

With this in the backdrop, the Committee went into great detail regarding issues concerning civilian employees and also grievances and systemic aspects which were causing heartburn. While our committee is not a substitute for a **Joint Consultative Machinery** (JCM), we attempted to examine certain issues on a macro level with the official side and also meticulously perused the representations and papers submitted to us by federations. Just like the issues related to the defence services, it would not be possible to place each and every issue under a magnifying glass, however we would like to touch upon some of the appropriate issues at a broad level and render our recommendations so as to eliminate heartburn and ensure an environment of harmony.

With this in the background, we take up these aspects, one by one, in the following terms:

6.1 NON CONDUCT OF JCM AS ENVISAGED, CONCEPT OF PNM AND LACK OF OFFICER-EMPLOYEE INTERACTION AND NON-ADHERENCE TO DOPT GUIDELINES FOR REDRESSAL OF GRIEVANCES:

One of the glaring aspects brought to our notice was that the existing mechanism of Joint Consultative Machinery (JCM) duly constituted by the Government, is almost in a state of dysfunction in the Ministry. It has been averred that not only the National Council but also the Departmental Council of the MoD, which is supposed to meet thrice a year is not even meeting once a year. This obviously has led to piling up of grievances, lack of outlet, frustration and melancholy amongst the employees. Needless to state, with such an interactive mechanism available, many issues can be resolved in-

house in an environment of cordiality wherein both sides are able to put across their points and counter-points and at times arrive at a harmonious solution. There has also been a demand of a Permanent Negotiating Machinery (PNM) as is applicable to certain other ministries such as the Railways and was also existing in MoD till about 40 years ago. It has been informed to us that this demand was rejected by the MoD vide its OM 1(1)/2013/D(JCM) dated 22-10-2013 but it was provided that additional mechanisms would be provided to recognized federations to resolve their grievances. This, it is stated, is not functioning properly despite repeated reminders issued by the D(JCM)/MoD.

The above reflects serious schism between the official and the staff side. We are constrained to observe that we are fully aware of the fact that the top echelons of the Ministry at times are not able to devote adequate time to all minute requirements of the employees and federations due to the reason of being highly occupied with other equally important issues. However, it is for the concerned departmental functionaries to keep the senior functionaries in the MoD in picture about the pulse of the pain being felt by civilian employees and recognized federations. It seems that steps are required at the Defence Secretary level to reiterate to all concerned functionaries to strictly adhere to the JCM mechanism and go out of the way to resolve grievances which can be effectively tackled without litigation. It would also be pertinent to ensure meticulous compliance of MoD OM dated 22-10-2013 and monitor the same in the strictest possible manner so as to ensure compliance of MoD's directions to all concerned and eliminate any laxity at the cutting edge level. It would also be important to observe that the directions contained in the existing DoPT instructions such as designating Public Grievances Officers and Director of Grievances and meeting-less days. We are not oblivious to the fact that some of the officers of the Ministry are already overburdened but it must be realized that a satisfied workforce is the cardinal feature of any organisation without which the very existence of an entity becomes difficult to sustain. Harmony between employees and the employer would always lead to higher productivity and therefore a greater service to the nation.

The Committee hence recommends the following:

(a) JCM as envisaged under the existing dispensation be meticulously held periodically and monitored by senior officers.

(b) Instructions regarding other mechanisms of resolution of grievances as envisaged under MoD OM dated 22-10-2013 may be strictly enforced and any contravention thereof by any concerned department, wing or office may be brought to the notice of the Defence Secretary.

(c) DoPT instructions regarding redressal of grievances and effective monitoring of the same, which we have already noted in the Chapters dealing with the defence services may be scrupulously followed including designation of Public Grievances Officers and Director of Grievances and meeting-less days as envisaged by DoPT OMs issued from time to time.

6.2 SPEAKING ORDERS:

A very pertinent point that has been brought to our notice is that in many administrative decisions, speaking orders are not being passed thereby not only leading to unnecessary litigation but also lack of transparency in functioning. It needs no emphasis that lack of transparency is the root-cause of litigation and grievances of employees. It also needs no emphasis that what goes in the mind (or in the file) of a decision making authority needs to be conveyed to the affected person in writing. A lesser known feature of the Right to Information Act, 2005, which goes beyond the provisioning of information, is Section 4(1)(d) which ordains that every public authority shall provide reasons for its administrative or quasi-judicial decisions to affected persons.

The Committee hence proposes that the MoD should and must issue strict instructions to all wings, departments and attached offices (including the defence services for uniformed employees) that henceforth all orders passed on representations or appeals would be speaking orders in the real sense spelling out the reasons for the said decision. This would not only meet the requirements of law but also ensure that the person concerned does not grope in the dark or resort to litigation or other forms of redressal just to know as to what were the reasons for the official establishment of not agreeing to his or her representation/appeal.

6.3 POSTINGS/TRANSFER POLICY: TRANSPARENCY THEREON:

Some submissions before us have emphasized on lack of transparency in postings and transfers. Since it is an internal matter of the official establishment as per official requirements, we would not like to interfere or go into details of the subject.

However the Committee would recommend that transparency should be ensured in this aspect to eliminate any arbitrary action and also to ensure that a particular set of officers or authorities may not be allowed to become power-centers for postings and transfers of employees.

6.4 APPLICABILITY OF JUDGEMENTS TO SIMILARLY PLACED EMPLOYEES:

This issue has been adequately been addressed in the Chapters dealing with defence personnel and is equally valid for civilian employees. Needless to state, whenever a legal principle is adjudicated, especially by the Constitutional Courts, that is, our High Courts and the Supreme Court, or attains finality, it needs to be applied across the board for all similarly placed employees or pensioners and the system cannot and should not force all similarly placed individuals to file individual cases. The net result is loss to the exchequer, loss to the employees/pensioners, heartburn amongst the workforce and most importantly unnecessary burdening of the dockets of the Courts. In certain cases, the legal expenses also outweigh the total amounts due towards employees. In any case, financial burden cannot be a ground to refuse the universal implementation of a judicial verdict or to perpetrate illegality [See **Haryana State Minor Irrigation Tubewells Corporation Vs GS Uppal** (2008) 7 SCC 375 and **All India Judges' Association Vs Union of India** (1993) 4 SCC 288].

The Committee hence recommends that whenever a legal principle is settled by a High Court or the Supreme Court, the same must be universally applied to all similarly placed employees or at least on individual representations after examining the same, rather than forcing them into individual litigation. Needless to state, the same has already been held by the Supreme Court in a catena of judgments. It must also be ensured that even if in certain circumstances there is inability of immediate issuance of universal orders, the counsel representing the Government should be directed to concede cases after due diligence so as not to continue the defence of settled matters thereby causing monetary harm both to the litigants and the Government.

6.5 RISK ALLOWANCE TO LEFT OUT CATEGORIES/UNITS:

It has been brought to our notice that various categories such as Storekeeping staff, fire fighting staff, etc were not granted risk allowance despite recommendations by the risk allowance committee. The issue, we are informed, was close to resolution when it was referred to the 6th Central Pay Commission which in turn recommended risk insurance which has also not been implemented. The rates of the allowance have also not been enhanced even after the 6th Central Pay Commission. We are also informed that the JCM has agreed to this on an in-principle basis.

The Committee therefore recommends that in case the subject has been deliberated and considered by the JCM and also agreed upon, then the matter may be implemented within a period of 3 months and closed so that it does not lead to litigation.

6.6 LTC: ONE TIME RELAXATION:

Instructions were issued by the Government of India for government employees to book tickets directly from specified agencies which were not followed scrupulously since neither did these instructions reach all employees on time, nor were these effectively circulated in many ministries so as to avoid confusion. The non-adherence to such instructions by many employees, defence and civilian, was hence purely unintentional and not with any intention to deceive the system or to obtain any undue advantage. Many representations have been made to the DoE/MoF and the DoPT for resolving the issue but to no avail. Many Court cases are also pending on the subject wherein stay orders have been issued against recoveries from affected personnel.

Though it is not directly within our purview since it involves multiple organisations, the committee would like to impress upon the MoD that the issue needs to be taken with all seriousness and the concerned Departments and Ministries convinced about the merits of the matter thereby leading to the issuance of a one-time relaxation after exercising due diligence since otherwise all Ministries are bound to be inundated with Court cases on the same subject. It may be again underlined that this subject may not be emanating from any ill-intention of employees but may merely be a procedural matter.

6.7 ISSUES SPECIFICALLY RAISED WITH REGARDS TO ANOMALIES IN MACP AND ACP AND MINOR ISSUES WHICH ARE NEEDLESSLY LEADING TO HEARTBURN:

Many federations, including the *Bhartiya Pratiraksha Mazdoor Sangh*, have submitted their written requests for resolving various issues related to MACP and ACP concerning their employees. Much as we would like to address them, we are afraid that we would not be able to go into the merits of such subjects which involve deliberations by a host of agencies. We however fully feel the pain of the concerned employees and endorse that the interpretation of certain provisions of the ACP and MACP schemes and also the lack of harmonious implementation and lack of foresight in deliberating upon futuristic controversies that could have arisen when these schemes were implemented, have led to a host of anomalies. We are also pained to know that some very petty issues such as Special Pay to Staff Nurses etc which are even covered by the Gazette Notification issued in pursuance of implementation of the 6th Central Pay Commission Recommendations, are lying unresolved due to objections of junior staff of the MoD (Finance). This leads to unnecessary heartburn due to needless obduracy and needs to be checked at the highest level.

The Committee would therefore recommend that the Ministry, under the JCM or by way of any other consultative mechanism, by involving stakeholders, must, within a period of three months, undertake to meticulously examine all such problems that have arisen due to anomalies perpetrated by implementation of ACP or MACP, especially with regard to restructuring of Artisan staff, issues related to movement from Highly Skilled to HS-I, grant of ACP/MACP to security staff of OFB etc. We have been informed that the issue related to Highly Skilled and HS-I staff had been addressed by a decision of Kolkata Bench of the CAT but while two decisions were implemented, two were challenged before the High Court. If this is correct, it may be ensured that no such discrimination is caused to employees and the decisions if implemented and accepted for a section of employees must be implemented for other similarly placed employees also. The minor issue related to Special Pay of Staff Nurses working in Operation Theatres must also be addressed within a period of three months from the submission of this Report.

6.8 REGULARIZATION OF CONSERVANCY STAFF RECRUITED DURING 1996 TO 2001:

This is again a matter that should have not been lingering on for such a long period in view of the fact that the subject has attained finality by way of a judicial pronouncement. The Defence Service Regulations cater for military authorities to arrange for conservancy arrangements. Accordingly, 1998 individuals were recruited as conservancy staff and posted to various Station Headquarters during the period 1996 to 2001 as per data provided to us by GS Branch/SD-7 (Civ). The appointments were made after fully satisfying all requirements and also on the recommendations of a board which had a representative of the Controller of Defence Accounts on it. The appointments were made as per recruitment rules and also notified by the Ministry against proper sanctioned posts. All individuals also completed their probation period successfully.

In the year 2001, CDA authorities suddenly objected to these appointments on the pretext that these were made during the “ban” period which was in force since 1984 and their pay was consequently converted into ‘provisional pay’ by the Defence Accounts Department after 2001. The reason for the recruitment of this staff was that the ‘*Prem Sagar Committee*’ had recommended that the ban on posts should not be applied to conservancy staff and the said recommendations were accepted by the Government. It is yet another matter that there was no specific mention of ‘Conservancy Safaiwala’ in the noting sheet that was finally approved but the omission was only procedural in nature and not substantive since there was no objection on the recommendation to exclude this cadre from the ban.

Out of the total affected staff, 78 individuals who were recruited in Bathinda Station HQ filed a case which was ultimately decided in their favour by the Punjab & Haryana High Court and the SLP filed by the Union of India, that is, ***SLP 16578/2001 Union of India Vs Baljinder Singh & others***, was also disposed on 23-07-2010 when the Supreme Court was informed of the regularization of the said individuals.

The problem however remains that the petitioners who had sought judicial intervention now stand regularized but the others who had not approached Courts are being kept under a hanging sword with the authorities now seeking the cancellation of their appointments rather than regularization.

We have been informed that SRO 121/1988 anyway prescribes a sanctioned strength of 16476 in this cadre whereas the current strength is only 16212 including the 1920 posts which are under consideration for regularization. Hence in any case, the entire objection raised is redundant in actuality since the total held strength is in any case well below the sanctioned strength. It is not the case of anyone that the staff was recruited illegally or by circumventing the procedure or not on sanctioned posts, the only hyper-technical objection being that the recruitments were made during the 'ban period'. We have also been informed that the cadre itself is now a dying cadre and no further recruitments are taking place in the same.

The following facts emerge out of our above discussion:

- That the conservancy staff was appointed by the establishment and the individuals cannot, in any manner, be faulted.
- That the individuals who were recruited were recruited as such on sanctioned posts and in fact even as on date their total held strength is much lesser than the sanctioned strength.
- That there is no allegation that these recruitments were made illegally or by way of a *malafide* action and the only objection is hyper-technical and procedural in nature, which is, that the said recruitments were made during the 'ban period'. Even the fact whether the said period was 'ban period' or not is debatable and hence the benefit of doubt must go to the individuals. Even otherwise, 'ban period', if hypothetically assumed to have been applicable, also did not mean complete ban but only meant that sanctions were to be taken for recruitments on a case to case basis.
- That the Punjab & Haryana High Court has already granted relief to 78 such individuals but the same is being denied to others who have not approached any Court of Law till date. The SLP filed against the order of the High Court stands disposed and the individuals stand regularized.

In view of the above, the Committee recommends that all similarly placed conservancy staff must be immediately regularized since they have been recruited on sanctioned posts and it can in no manner be said that they were at fault. Further the objections against their regularization are purely hyper-technical and similarly placed employees already stand regularized on Court orders. The Ministry must proactively take action on this, and if required, coordinate with DoE and/or DoPT to ensure that injustice is not caused to these individuals. The Committee hopes that the Ministry shall act fairly and judiciously with this staff and ensure their regularization at the earliest since inaction or any negative action is only going to lead to further litigation in this regard which is an issue already judicially settled.

6.9 CASES OF EMPLOYEES WORKING IN NORTH EASTERN REGION WHO ARE ENTITLED TO EXTENDED BENEFITS OF LICENSE FEE @ 10% COMPENSATION IN LIEU OF RENT FREE ACCOMMODATION:

Civilian federations have informed that civilian employees working in the North East are entitled to extended benefits of license fee @ 10% compensation in lieu of Rent free accommodation.

The said benefit was being refused to such staff after which there was a spate of cases in which relief was granted to such employees and even the SLPs (Four in number) were ultimately dismissed by the Supreme Court. The last SLP, that is SLP(CC) 8050/2014, was dismissed on merits on 02-07-2014, however we are told that the benefits still have not been extended to similarly placed employees.

The Committee feels that this again is a perfect example of an issue where the concerned agencies are yet to come to terms to the fact that cases of employees have been allowed and they have been granted relief by Courts. Many such cases are pending before the CAT on the subject and it is high time grace is shown by the concerned agencies and the matter is finally conceded and not made a prestige issue.

The Committee therefore strongly recommends that the matter be finally closed by issuing universal orders on the subject especially after the dismissal of SLP (Civil) CC 8050/2014 in Union of India Vs Bahadur Sonar & others dated 02-07-2014 otherwise the influx of litigation and litigation costs and burden on the Petitioners as well as the Union of India plus the dockets of the Court on this very subject would encumber the entire system which may be totally unnecessary since the matter is no longer *res integra* having attained finality at the level of the Supreme Court.

6.10 INCLUSION OF ELEMENT OF HRA, TRANSPORT ALLOWANCE ETC FOR CALCULATION OF OVERTIME WAGES UNDER SECTION 59 OF THE FACTORIES ACT, 1948:

The interpretation of whether elements of HRA, Transport Allowance etc were to be included in the calculation of overtime Wages under Section 59 of the Factories Act, 1948 was adjudicated in the favour of employees of Ordnance Factories in the State of Tamil Nadu by the Madras High Court and an SLP has been filed before the Supreme Court by the Ministry.

We have however been given to understand that other Government establishments are interpreting the said provision in favour of employees while the MoD is interpreting it differently.

The Committee therefore recommends that if the fact that the provisions of Section 59 of the Factories Act, 1948, are being interpreted differently is true, then the same may be enquired into diligently from other ministries and departments and action taken accordingly on whether to continue with the SLP already filed in the Supreme Court or not.

6.11 REVISION OF NIGHT DUTY ALLOWANCE IN REVISED PAY SCALE TO DEFENCE CIVILIANS:

The issue regarding revision of Night Duty Allowance stands decided in favour of defence civilians, we have been informed. It has been brought to our notice that the Jodhpur Bench of CAT in OA 34/2008 decided on 05-11-2009 had passed directions for grant of relief to all similarly placed employees and the decision was upheld by the High Court and then affirmed by the Supreme Court however still the relief has only been extended to individual petitioners who had approached the Court.

The Committee hence recommends that in case it is correct that the CAT had directed the benefits to be released to all similarly placed employees and the decision has attained finality and also affirmed by the Supreme Court, then there is no reason for forcing individuals into litigation which is not only infructuous but is going to lead to unnecessary heartburn amongst the employees.

6.12 SPECIFIC ISSUES RELATED TO GREF:

The General Reserve Engineering Force (GREF), raised in the year 1960, has been rendering yeoman's service to the nation by providing direct support to our combatants in very tough border areas to protect us from hostilities. The force is raised on a military pattern with uniforms and has a military command structure under a Lt Gen of the Indian Army who is the Director General of Border Roads Organisation.

There has been deep anguish amongst the rank and file of the organization, and rightly so, since they are '*neither here nor there*', in the sense that they are neither treated as proper defence employees nor enjoy the full rights and benefits of being civilian employees. They operate under the Army Act and are also under the CCS Rules. It is yet another matter that the force has been duly declared an 'Armed Force' by the decision of the Supreme Court in ***R Viswan Vs Union of India*** after which it was officially declared as such by virtue of a Presidential order.

Over the years, GREF employees, some serving in very difficult areas and conditions have been forced into litigation for a variety of issues but the Committee is pained to observe that we have been informed that in almost all cases, the Government has gone into appeal up to the highest Court of the land leaving such employees deeply demoralized and hurt. We need not say more but we fail to understand the psyche of officers and officials who indulge in such luxury of litigation against their own employees till the Apex Court!

Though a host of issues have been raised by the All India GREF Ex-Servicemen Association, we feel that only the following fall within our ancillary ambit on which we could render our recommendations, and hence undertake to do as such:

(a) Disparity in allowances: We have been informed that there is wide disparity in certain risk related allowances between employees of GREF and those of Regular Army. We would like to recommend that a High Level Committee be constituted by the Government to look into all such anomalies which then could be resolved on recommendations of this Committee. Some of these aspects have already led to litigation which is best avoided in the best traditions of the force. It may however be kept in mind that a view in totality may be taken, in the sense, that there may also be areas wherein the GREF employees may have

been placed on a system of being compensated in some other arena which may not be applicable to combatants of the regular forces, such as double HRA etc. Here, we would like to draw attention to the fact that after 6th CPC, vide Para 9, pp32 Ministry of Finance/Dept of Expenditure Resolution dated 29-08-2008, published in Gazette of India Extraordinary No 304, in principle approval of scheme of allowances, for CPMF officers of the rank of Commandant and below, and other ranks of Battalions deployed in difficult/Counter Insurgency Operations and High Altitude areas, keeping in view the allowances granted to Defence Forces personnel in such or similar areas, was accorded and the scheme operationalized.

(b) Ex-Gratia payment on death at par with other Central Government and armed forces employees: The problem in this aspect arises from the reason of GREF employees being placed under the purview of the Workmen Compensation Act to which the ex-gratia lumpsum does not apply. We would request the Ministry to look into this aspect and examine as to how it could be resolved. GREF employees, who work in as tough environment as other employees, if not more, may not be placed at a disadvantage vis-a-vis employees of other services. This has already led to litigation against which an appeal filed by the Government is pending.

(c) Leave entitlement: Leave entitlement of GREF personnel has been liberalized but the said entitlement has not been extended to personnel posted in Delhi. We find this very strange since such personnel are posted in Delhi for very short periods after serving in extremely tough conditions. We hope the Government would be gracious and large-hearted enough to look into the issue and not let such minor anomalies creep into what is otherwise a very progressive step.

(d) Despatch of Mortal Remains of GREF personnel dying in the line of duty and provision of free conveyance facility to school going children: These are very genuine demands of the cadre. There can be no two opinions about the fact that GREF personnel who die in the line of duty while serving shoulder to shoulder with other combatants of the Regular Indian Army deserve the same respect. The least that we as a system could do is to accord utmost respect to such martyrs. We therefore recommend that the despatch of mortal remains of GREF personnel, who are a part and parcel of the armed forces and serve under the command of a Head of Department from the Regular Army, should be at par with other combatants of the Regular Army. Similarly, we recommend that the Government may take effective steps for extending free conveyance facility for school going children of serving GREF personnel as applicable to Regular Forces and this is the barest minimum that the official establishment can do to boost the morale of GREF personnel who serve in trying conditions.

6.13 CONTRADICTION POLICIES IN DIRECTORATE GENERAL OF QUALITY ASSURANCE:

This sub-head actually deals with uniformed officers serving in the DGQA but is being dealt with along with civilian employees since such officers are governed by DoPT policies in many aspects.

There has been a spate of litigation in the Directorate General of Quality Assurance (DGQA) due to inconsistent policies and unstable amendments on the issue of secondment of regular officers to DGQA.

The Committee recommends that an overhaul/review may be carried out by the Ministry by involving stakeholders, including affected officers, of the entire policy and new comprehensive guidelines (and not just a compendium of old policies) may be issued to end ambiguity on the subject of secondment of military officers in DGQA. While carrying out this exercise, it must also be ensured that the careers of officers may not be harmed retrospectively and all pending cases in Courts may be attempted to be regularized and harmonized by way of one-time sanctions for past cases. Comprehensive balanced policies would of course cater for resolution of all future cases. If any doubt arises as to the interpretation of such policies related to past cases, then the benefit of the interpretation must go to the employee to maintain a balance and harmony in the organisation which is inundated with litigation and claims and counter-claims. The exercise must be completed in 6 months from the date of submission of this Report.

6.14 SPECIFIC ISSUES CONCERNING THE DEFENCE RESEARCH AND DEVELOPMENT ORGANIZATION:

There are two issues concerning the DRDO that have attained finality but have not yet been universally accepted, on one pretext or the other.

The first issue pertains to the treatment of the two additional increments granted to Scientists 'C' and 'F' as pay for the purposes of service and pensionary benefits. The said benefits were granted not only to DRDO but also in a similar manner to the Departments of Space and Atomic Energy. Scientists of the Department of Space had approached the CAT for relief which ruled in their favour which was further upheld by the High Court. Ultimately, the SLP filed against the order was also dismissed on 04-04-

2011 after which the order was implemented for the Department of Space. While the said increments were treated as a part of pay by the Department of Space, the same was refused to the Scientists of DRDO which is definitely incongruous. Many Tribunals and High Courts have granted similar relief to DRDO Scientists but the organization has filed review petitions based on legal advice. We fail to understand the logic behind such an action. Once the order has attained finality at the Supreme Court and also implemented for similarly placed counterparts on concurrence of the Ministry of Finance in the Department of Space, then what purpose does it serve to deny the same out of habit to Scientists of the DRDO? We also fail to understand that what purpose does it serve on wasting such heavy amounts of the exchequer on unethical litigation when the final end of the same is written quite clearly on the wall since the same has already been accepted by another department.

The second issue pertaining to DRDO is the counting of Special Pay of Rs 4000 as granted to Scientists 'G' for the purposes of pension. Though the same was not strictly covered under the rules as per official interpretation, the issue was decided in favour of the Scientists by judicial orders ultimately affirmed by the Supreme Court on 02-02-2015. The case was taken up with the DoPPW and with the Ministry of Finance but the file is shuttling between various departments since queries of various nature, including financial implication, are being raised. We feel that once an issue has attained finality, the ground of financial implication cannot be raised in implementation of judicial verdicts of Constitutional Courts and the order must be immediately complied with to avoid unnecessary litigation on the subject in Tribunals, High Courts and then the Supreme Court.

In view of the above, the Committee recommends as under:

(a) A decision be taken to treat two additional increments granted to Scientists 'C' and 'F' of DRDO as pay for all intents and purposes since the matter has attained finality at the Supreme Court and the issue has already been resolved for exactly similarly placed Scientists of the Department of Space. All pending Review Petitions filed in various High Courts on the subject be immediately withdrawn.

(b) A decision be also taken to count the 'Special Pay' of Rs 4000 as granted to Scientists 'G' for the purposes of pensionary benefits since the said matter has already attained finality at the Supreme Court. Another SLP filed, despite the matter having attained finality, must be withdrawn at the earliest.

6.15 UNNECESSARY APPEALS, APPEALS TO BE AN EXCEPTION AND THE HIGH COURT TO BE THE LAST FORUM:

It is seen that as is the case with defence personnel, elements of the Ministry, spread over all wings and spheres, take extra efforts to file appeals against benefits granted to civilian employees also out of a strange form of obduracy and lack of moral courage of accepting the fact that Courts have held the official stand to be incorrect and upheld the rights of employees. The effort clearly is to wear down such employees by filing multiple appeals in all subjects. An observation to the same effect was made by the Hon'ble Chief Justice of India too, in court, as reported by the press recently (**Annexure-76**).

This Committee strongly feels that as a matter of principle, the attempt of the Government should be to accept court verdicts as far as possible. Appeals should be an exception and not the rule. And in exceptional cases only challenges should be made to the High Courts against verdicts of CAT rendered in favour of employees, and not as a matter of routine. Further appeals to the Supreme Court should be undertaken in the rarest of rare cases and should be discouraged at all levels in the Ministry. Just because the Government has at its disposal a large number of Government lawyers does not give the right to indulge in litigation of luxury against employees, some of whom are from the lower socio-economic strata. The Hon'ble Prime Minister and the Hon'ble Raksha Mantri in particular have already expressed their displeasure regarding excessive litigation and we hope and pray that the instrumentalities of the State understand that the litigation with which they are carrying on with impunity and without change in their attitude militates against the very opinion and wish expressed by the highest political executive. We also hope that Secretary level officers of the Ministry would strictly impose this resolve of the political executive and ingrain it in their subordinates, especially the financial wings, that this culture of 'legal challenge' must now cease and they should concentrate on improving governance and administration rather than waging a litigative war against their own junior employees who have limited means, in Courts of Law.

CHAPTER

VII

POTENTIAL AREAS OF DISPUTES AND ADDITIONAL OBSERVATIONS EMANATING OUT OF OUR DELIBERATIONS

7. POTENTIAL AREAS OF DISPUTES AND ADDITIONAL OBSERVATIONS EMANATING OUT OF OUR DELIBERATIONS:

The succeeding paragraphs deal with issues which are potential areas of disputes which need to be addressed well in time but which could not have been precisely categorized in the preceding Chapters of this Report.

7.1 Issues related to lateral induction and reemployment:

One of the root causes that has resulted in turmoil of sorts amongst the veteran community is the lack of efficient reemployment opportunities and lateral induction of a trained manpower that is not effectively utilized by the nation. Though not directly related to litigation, the subject is too significant to ignore since it has come up in almost all depositions before us.

It is well understood by all concerned that members of the military, especially the Army, start retiring at the age of 34 years+. It is the age of 30s and 40s when the familial and societal responsibilities of an individual are at the peak and hence the very fact of reduction of total earnings by half hurts the most. Early retirement is a direct resultant of the reality that the nation has to retain a fit and young manpower in the defence services and the nation thus has the corresponding responsibility for those who are retired at such a young age as compared to their peers on the civil side. Of course, it is also not in national interest to waste trained manpower and also to keep them employed in constructive activities which support the national effort.

Besides other reservations, what is most important for Other Ranks is that the Central Government provides 10% and 20% reservation in employment at Group C and D level respectively but the said reservation is proving to be redundant in a way since the concept of Group D has been abolished but the percentages of the said two categories have not been amalgamated. Even the Defence PSUs and organizations within the sphere of MoD are not reacting positively to the availability of ex-servicemen. Sadly, even after the Director General Resettlement (DGR) had written to all defence PSUs on directions of the Hon'ble Raksha Mantri, only 8 PSUs have replied and in that out of the total 3096 vacancies, only 9.52% stand utilized. **It has been calculated that more than**

6,90,000 vacancies today stand unutilized in the Central Government and an almost equal number in the State Governments. The reemployment figures are dismal. We have been informed that out of about 60,000 retiring personnel, only about 4000 are reemployed by the DGR, despite best efforts.

The problem also is, that the military status and rank is not being protected in civilian organisations in regular direct recruitment. For example, one cannot expect senior Group C level Non Commissioned Officers or Gazetted Group B level Subedar rank Junior Commissioned Officers to join the civil side as Multi Task Staff or other junior appointments that are advertised and that is one major reason that the said quota remains unfilled. We were shocked, rather disturbed, when an example was brought to our knowledge wherein an Honorary Captain had been employed as a “Helper” by the Railways. Such shocking examples, and there are many, are the greatest disservice by us towards the *izzat* of the military rank. Even the much touted quota for released Short Service Commissioned Officers in the Central Armed Police Forces (CAPFs) at the Group A/Assistant Commandant level is redundant since SSCOs are not released below the rank of Major (Grade Pay Rs 6600) while their reservation is being operated upon at the rank of Assistant Commandant which carries the Grade Pay of a Lieutenant, that is, Rs 5400. At Group A level posts in the Central Civil Services, there is no lateral induction and there is also no protection of seniority as was the case during National Emergencies wherein not only was seniority provided in the civil service for the service rendered in the military but also certain examination papers were exempted, a system that stands discontinued. Even within Defence PSUs, officers are being asked to join at lower level appointments. For example, for a “Director” level appointment, officers from the civil services of the Grade Pay Rs 8700 are being sought while the rank mentioned for the defence services is not that of a Colonel which also carries a Grade Pay of Rs 8700 but of a Brig who has a Grade Pay of Rs 8900. To take a practical example, there are civilian officers of the Grade Pay Rs 8700 who are serving under Military Officers of the rank of Colonel with the same Grade Pay of Rs 8700 in mixed organizations and while the civilian junior in the same organization is eligible to apply for the said appointment, his military senior is not made eligible. Similarly, a Commandant of the Coast Guard in Grade Pay 8700 who may be serving under a Captain of the Indian

Navy with the same Grade Pay can apply but not the said Captain (IN). We have also been informed that the age limit in some of these organizations is such that former defence officers are rendered ineligible being overage.

Another problem that is encountered time and again is the lack of availability of timely and proper advice and action by the DoPT on issues related to reemployment of ex-servicemen which also leads to litigation at times. This can be easily resolved by creating a coordination cell within the DoPT or even the DESW with a nodal officer authorized to process all such cases within stipulated timeframes.

Skill development is yet another area which is not fully exploited which should definitely be the focus of the Ministry and the defence services.

A very valid proposition, circulated in the past, but not implemented in letter and spirit, is the configuration of our retiring veterans with options in civil industry or defence related production/industry in conjunction with organizations such as FICCI where secondary avenues can be provided for gainfully utilizing the retiring manpower.

Another way to engage the trained resources of ex-servicemen is to create a body or organization of veterans, an idea put across to us by Ambassador SJ Singh, IFS (Retd), who is a former war disabled army officer, where such veterans could be utilized in nation building and constructive movements such as *Swachh Bharat* programme, rejuvenation of rivers, disaster management and other like activities. Such a Corps can even be conceptualized by asking veterans to join such units closest to their homes and even on a fixed hour or flexi-hour basis each day (part time). Modalities can be brainstormed by concerned agencies. Former veterans could also be associated with Civil Defence organisations but the concerned agencies would have to get out of their comfort zones and think out of the box to give effect to such ideas.

In view of the above, we would recommend that attention may be paid to the following issues concerning this subject:

(a) The desirability of protection of the status (not just pay) as per military rank or length of military service of ex-servicemen who are reemployed on the civil side or offering them lateral appointments consistent with their status and experience.

- (b) The desirability of inception of a proper coordination cell on ex-servicemen employment issues in the DoPT or the DESW since policies related to the same are under the purview of DoPT and there is lack of coordination between the DoPT and the MoD/DESW/Services HQ leading to undue delays on decisions on any issues cropping up based on such policies.
- (c) Improvement of educational qualifications and skill development should be an ongoing process while in service and should be adequately stressed upon. Methods be explored for a higher configuration with organizations such as FICCI on mutually acceptable terms.
- (d) The vacancies reserved for Group D should be amalgamated into Group C on the abolition of the former. Also, it should be ensured that JCOs are not offered and are discouraged from taking appointments lower than their erstwhile military status and are offered appointments commensurate to their status and service.
- (f) Examine the desirability of gainfully employing veterans by way of formulation of a veterans' body for involving them in constructive activities and nation building.

7.2 Social Engineering, Social Media and mechanisms of interaction:

Social media, as is rightly perceived, is a double edged weapon. But whatever we might say or observe, it is here to stay and the establishment needs to live with it and also harness its constructive usage rather than deny its impact on our day to day lives.

With internet penetration on the rise, social media has become a part and parcel of life, and the defence services are no exception. Social media, therefore, cannot be treated as a phenomenon that needs to be resisted. In fact, any resistance may be counterproductive and would discourage youth to join the services or may result in unauthorized usage of the same. However, it is, at the same time, imperative that immature or uncalled for usage which may have linkage with military aspects of a person's life, should be a strict no-go zone and this too needs to be instilled in the rank and file. The recent formats introduced by the Army for social media users in this regard, to our mind, are not in tune with practical realities and are rather intrusive. The heading of the form (**Annexure-77**), that is, "Application for seeking *permission* to use social networks", may also not be legally sound since we do not think a Citizen of India even if a Government employee can be made to seek 'permission' to use social media,

of course action can definitely be taken if a person contravenes regulations or restrictions imposed by service rules. If such 'permissions' are allowed to prevail then there is no end of what all could be regulated with 'permissions' for anybody serving a Government organization. In fact, no such 'permission' is sought by the Navy or the Air Force or even any other Government service for its members and hence there is requirement of reviewing such an approach initiated by the Army alone. Such formats which seek technical details of users may also be an invasion of privacy and no purpose is served by extending the reach towards family members and veterans and the said step is bound to increase disdain towards the entire issue. But this is not to say that there is no requirement of checks and balances in this regard since there has been an immense amount of immature and incorrect usage of social media in the recent past which has also dangerously spread disaffection amongst the serving and the veteran community, but then a broad-based prohibition, to our mind, is not warranted. The undertaking for reporting '*anti-org*' information in the format above also does not seem robust since it happens to be a generic term which can be subjectively invoked, used or misused.

The broad thumb rule from the security point of view of course is that nothing militarily operational or strategic be discussed or placed on social media by members of the military and this needs to be inculcated amongst the rank and file coupled with due action wherever they are found wanting, rather than imposing such overarching forms and instructions which are not in tune with reality and which project the defence services to the world at large as having outdated beliefs and ideas. Further, disinformation campaigns must be countered in real-time terms from verified accounts rather than imposing restrictions.

At the organizational level too, social media and internet need to be harnessed in the best possible way. It may be appreciated that Service Rules prohibit communication to the press or even rendering lectures/address etc related to service subjects by members of the military without prior permission (See Rule 21 of the Army Rules, 1954, and similar rules for the other two services). Further, even service grievances cannot be vented out officially other than by following the laid down proper channel and senior authorities cannot be approached directly. The only way to approach seniors is by

writing DO letters which are semi-formal communications and not strictly official in nature. Even otherwise, military personnel are prohibited from forming unions and associations as in other services, and rightly so, and hence there is a lack of channels by way of which a catharsis or vent is available. This lack of outlet has the propensity to lead to heartburn or accumulation of pent up emotions. Even certain day to day grievances, which are not strictly related with service, are not at times addressed due to lack of such an outlet. The problem gets accentuated because of long distances from one's chain of command and living away from family.

The above situation cannot be resolved unless some kind of a system is introduced on the intranet (thereafter in due course, even on the internet with proper checks and balances) wherein defence personnel can place their service-related and allied queries and issues electronically and get a response from the concerned departments within the official establishment in a speedy manner. Also, a system needs to be evolved wherein an electronic interaction with senior officers in an informal way is made possible, wherein issues not directly related to service or not operational and strategic in nature, such as facilities or amenities in a station, housing issues, social subjects, points of general concern to the military etc can be discussed freely in an interactive manner by the rank and file with seniors thereby not only bringing transparency, but also providing a channel which would not only result in psychological upliftment but also result in better cohesion in the military- something like an electronic version of a *darbar/samelan* or a virtual face to face informal discussion that may not be physically possible due to distances and other reasons.

Similarly, feasibility of effective response mechanism, including creation of twitter handles, needs to be examined for all offices dealing with public grievances, such as, PCDA (Pensions), all Record Offices, the AG's Branch and equivalent in all three services, Veterans Cells of all three services etc where an interactive format could be effectuated. In fact, all official handles should not just indulge in one-way dissemination but imbibe an interactive interface which would also help in countering rumour-mongering or disinformation in real time.

Fortunately, the answers to the above are not far to seek and we have live examples within the establishment which could be emulated and replicated with appropriate modifications wherever felt necessary. On the first point of an official mechanism, the Indian Air Force already has a system of **AOP Forum** wherein all ranks can post their queries which are then replied to by the concerned branches and which can be viewed by anyone wanting to do so to avoid duplication of queries. The said system can be easily emulated by the other two services. We understand that there would be resistance in adopting the system on the pretext that the Army is numerically huge, however a start needs to be made at some time and this is the right time to do so, moreover, this would be much healthier and efficient than wasting man-hours in paper work and replying through regular mail by depleting resources and increasing anxiety. If the offices of PCDA (Officers) and PCDA (Pensions) can handle such high number of queries, so can the Services HQ and other establishments. In fact, such an effort would, by itself, result in reduction of litigation when many of the problems of defence personnel would be resolved in-house and personnel would not grope in the dark or indulge in litigation on issues which could be clarified at the first stage itself.

On the second point, the Western Command has initiated a proactive blog handled by the Army Commander himself which has resulted in a high degree of satisfaction amongst personnel posted in the said Command. The same can be studied and emulated in other Commands and we would propose that all Cs-in-C of the three services must have their own institutional interactive mechanism, such as blogs, where they can freely interact with personnel under their command directly, personally and without any filtration by their staff officers. This would not only help them analyze the pulse of the men and women under them but also improve the trust and satisfaction level of juniors. The Army HQ had initiated a concept called the “Chief’s Dreamer’s Club” at one stage but the messages posted on the same were mostly replied in a hackneyed official manner, which should not be the case in the case of such blogs. Such blogs would just be a more interactive, participative, informal and speedier replacements of DO letters on general issues (not individual career aspects) or even face to face conversations and *darbars/samelans* which is not possible in the military due to a variety of reasons, including distance.

We would also recommend that a few lectures or pamphlets be introduced in all training academies of all three services on the *Dos* and *Don'ts* of Social Media and messaging services but again care should be taken not to discourage the use of these very important tools but to encourage responsible and constructive use of the same and highlighting the pitfalls of negative usage.

The above steps would definitely lead to a higher degree of satisfaction and also reduce disputes and complaints when implemented in a holistic manner.

In view of the above, we would recommend the following:

(a) Capsules/lectures on social media and mass messaging services be introduced in all military academies wherein constructive usage of social media could be encouraged and *Dos* and *Don'ts* of the same can be clearly spelt out. It may however be kept in mind that on no occasion should there be any discouragement of usage of social media and it merely should be instilled that service aspects concerned with operational and strategic issues may not be placed or discussed on social media in any direct or indirect manner. The forms/formats introduced by the Army recently should be immediately reviewed. It must also be kept in mind that there should not be knee-jerk reactions on such issues since any unnecessary impediments in this regard have the propensity of sending a wrong message to the youth of the day about life in the Armed Forces.

(b) Interactive outlets such as blogs be initiated, to be handled by senior commanders in all three services on the lines of the one initiated by the Western Command of the Army.

(c) Online fora for dealing with queries of the rank and file which are replied in a speedy manner be introduced in all three services on the lines of AOP Forum already in vogue in the Air Force.

(d) Interactive mechanism such as twitter handles be introduced for all offices dealing with public grievances, such as, PCDA (Pensions), all Record Offices, the AG's Branch and equivalent in all three services, Veterans Cells of all three services etc where such formats could be effectuated. Only one nodal officer each be designated to handle twitter and social media in all such branches and he/she be provided all assistance by all branches on the lines of Public Information Officers designated under the RTI Act.

(e) All social media mechanisms of the Ministry and Defence Services should be interactive and not one-way and should be effectively utilized to counter disinformation and rumour-mongering in real time.

7.3 Issues related to Women Officers:

Obviously this is a subject that has been the cause of much debate and litigation in the defence services.

It is definitely a complex subject and though this Committee would not be able to go into the merits and demerits of the issue threadbare. There are arguments and counter-arguments on the role to be assigned to women officers and both sides of the debate may have valid points that may need deeper deliberation. Also, there might have been some appropriate decisions taken by the Services in this regard but not properly projected in the media thereby leading to negative publicity. However, this Committee is concerned with litigation and potential disputes and feels that a default reaction to appeal every case that is decided in favour of women officers is not proper and any such decision should be taken at the highest level of the Raksha Mantri after due consultative discussion without being only influenced with one side of the matter. It may also be kept in mind that the decision of appealing in such cases decided in favour of women officers or in any such ancillary matter should be taken in a well-rounded participative manner by involving all stakeholders including representatives of the defence services and by inducting on any such study panel at least one serving woman officer of the Defence Services and one released woman veteran.

It has come to notice that the Coast Guard, after selection of women officers, takes an undertaking from such officers that they shall not get pregnant within three years of completion of training and other such incongruous restrictions such as that they shall not get pregnant more than twice during their service careers, and if they do so, their services would be terminated. This, to our mind, is absolutely at odds with the world we live in. Firstly, is any such undertaking taken from women in other services or even women in other uniformed services? Secondly, can such undertaking be legally valid at all? Thirdly, is the incidence of pregnancy always planned? The Coast Guard should realize that women officers have the ability to understand the finer nuances of service life and are well capable of keeping service exigencies in their mind while planning family, just as male officers. Any such stipulation shows the entire organization in a regressive light and should not be allowed to remain valid.

In view of the above, the Committee recommends that appeals in decisions favouring women officers and their cadre management may not be filed as an auto-response but only after seeking the specific approval of the Raksha Mantri based on dispassionate and unbiased inputs. Any study group in the future deliberating upon the desirability of inducting women in various arms/services/branches or their cadre management and legal issues may be constituted in a well-rounded participative manner by involving all stakeholders including representatives of the Services and by involving on any such study panel at least one serving woman officer of the Defence Services and one released woman veteran so as to find holistic, realistic and dispassionate solutions to all such related issues. We also recommend that the forms of undertaking in the Coast Guard from women officers to the effect of 'pregnancies' should be immediately reviewed and regressive stipulations removed.

7.4 Proactive Responses of Record Offices and the Principal Controller of Defence Accounts (Pensions):

This Committee is very clear on the fact that a variety of problems of pensioners and their families could be resolved and litigation avoided in case Record Offices and the office of PCDA (P) pensions become more proactive in their approach.

Many instances have come to our notice wherein Record Offices have not applied proper mind while dealing with pensionary issues concerning veterans, disabled soldiers and families or have dealt with problems based on a restrictive point of view or outdated policies. The problem becomes even more acute since over the time, many pension sanctioning powers have been granted to Record Offices for ranks other than Commissioned Officers, including for disability and casualty benefits. There are many cases wherein the Record Offices do not even care to respond to queries or letters from veterans and families unless there is intervention of senior officers or higher HQ or the Veterans Cells. The problem is more acute with the Army. Similarly, the office of PCDA(P) at times takes ages to issue relevant PPOs or Corrigenda whenever the same is due from their side, although we must place on record that the response time of emails endorsed to the office of PCDA (P) has become much better in the last year or so.

It therefore becomes imperative to ensure that all Record Offices at least reply to all correspondence, paper or electronic, that is directed towards them. They may take action to honestly resolve issues that pertain to them or to direct veterans and families to other authorities in case the issue is not resolvable by the Records Office. An outer period of one month needs to be defined for reply to each correspondence. A submission was made before the committee that soon electronic applications to all Record Offices would be a reality and the system would become more responsive. We are happy to know about the strides in this direction but we must pause and caution here that the wide compass of veterans and their families spread in all directions cannot be expected to be so tech savvy so as to use electronic or internet means effectively. Hence a system must be put into place for ensuring a response on each and every letter received by Record Offices on pensionary or welfare related issues at the earliest occasion, and in any case not later than 30 days from receipt of the communication. This shall apply to both physical letters and electronic communication. An IVR system in all Record Offices must also be considered. Additionally, the email addresses of the Record Offices must be displayed prominently on all official websites. A senior officer in each Records Office or Regimental Centre must be designated as “Grievances Officer” or “Public Grievances Officer” (GO/PGO) who can be communicated with in case of no reply on a communication from a Records Office within 30 days. The name, address, telephone number and email address of the GO/PGO must be displayed clearly on the official websites and on each official communication from all Records Offices. In case of a complaint to the GO/PGO, the said GO/PGO must also reply within a period of 30 days. The Veterans Cells/Directorates of the three services must keep an overall watch over the system and must attend to any complaint made against the Record Offices or units or GOs/PGOs promptly.

It is also felt that similar GOs/PGOs may be appointed in military medical establishments with complete details displayed at prominent places in such establishments so as to enable patients or their families to easily communicate their difficulties. Further, it is felt that the Commandants of all such establishments must also review all complaints received on a fortnightly basis.

We also feel that serving Low Medical Category personnel, who cannot be appropriately adjusted in units in sheltered appointments, can be gainfully utilized in such soft appointments requiring sensitivity and dealing with veterans and their families, after due training. This may also be read in conjunction with **Para 7.7** of this Report.

Apart from the above, we find that there is heartburn amongst families of the deceased who are not released the due benefits, at times due to lack of alacrity of the system, and at other times lack of proper documentation. We feel that a central agency must be notified in all three services to cater to and to follow up complaints of families of Next of Kin, or the existing system be made more proactive. For a variety of reasons, we feel that the Veterans Cells/Directorates of the three services would be apt to take up this responsibility and a nodal officer be appointed in the veterans cells to follow up all such complaints/representations/queries with the Records Offices. Even the feasibility of a tri-service coordination agency/centre can be examined.

Another aspect that is disturbing is the destruction of important records of veterans, especially medical records. It may be important to observe here that medical documents and records, especially board proceedings, were considered 'confidential' till the 2000s. This was a strange rule since nowhere in the world is medical record of a person not provided to him or her. It may be understandable to not to disclose the medical records of others to maintain privacy but it is not comprehensible as to how could a person's own medical record be held back from him or her! As a result of this incongruous situation, many veterans lost out on their medical and disability benefits because of the reason that they could not represent properly or not represent at all against rejection of their disability benefits since they were groping the dark about their medical state and medical board recommendations. Now, after a long period of time, when such personnel apply for their medical documents, in many cases it is found that the records have been destroyed in terms of the Defence Services Regulations, especially in cases of non-pensioners. This does not seem justified in this time and age when easy digitalization is possible. Even otherwise, personnel records are more of a national treasure now especially of old veterans even from the organizational and historical point of view and can be required at any time in view of the Government's own revision of policies based on various decisions or Court orders (such as OROP or the recent order of the Supreme

Court to grant service element to individuals w.e.f 01-01-1973). We would therefore urge that the personnel and medical records of personnel should not be destroyed and should be digitally preserved. Till the time digitization is brought into effect, there should be a moratorium on destruction of personnel and medical records of all veterans, pensioners as well as non-pensioners. Efficient means of storage should also be initiated at all Record Offices to preserve old documents till digitization is complete. The Record Offices (Including Man Power Directorate) should also be proactive in providing documents under RTI Act and not reject RTI requests on hyper-technical reasons since it results in unnecessary and infructuous correspondence and also at times prolonged litigation till Central Information Commission level.

The Committee hence recommends the following immediate measures:

(a) All Record Offices must mandatorily reply to all communications made to them, paper and electronic, within a period of 30 days from receipt.

(b) The email addresses of the Record Offices must be displayed prominently on all official websites. A senior officer in each Records Office or Regimental Centre be designated "Grievances Officer" or "Public Grievances Officer" (GO/PGO) who can be communicated with in case of no reply on a communication from a Records Office within 30 days. The name, address, telephone number and email address of the GO/PGO must be displayed clearly on the official websites and on each official communication from all Records Office. In case of a complaint to the GO/PGO, the said GO/PGO must also reply within a period of 30 days.

(c) The Veterans Cells of the three services must keep an overall watch over the system as above and must attend to any complaint made against the Record Offices promptly. There should also be a designated nodal officer to attend to and follow up complaints of next of kin or families of deceased personnel related to their benefits to be released or processed by the Record Offices or military units. Information regarding such nodal authorities must be prominently displayed, including on official websites. Veterans Cells must also be provided teeth and empowered to recommend appropriate action in case of any laxity displayed by any RO/GO/PGO.

(d) No personal or medical record of veterans be destroyed and a system of digitization be introduced for all Record Offices. Till the time digitization is brought into effect, there should be a moratorium on destruction of personal and medical records of all veterans. Efficient means of storage should also be initiated at all Record Offices to preserve old documents till digitization is complete.

7.5 Issues related to Short Service Commissioned Officers:

The Short Service Commission is definitely a very important scheme for individuals who would not like to make the defence services their permanent vocation and also to cater to the shortage of officers in the three services. The scheme has many advantages and has been a part of the system in one form or the other. For a long time prior to the year 2006, SSC was applicable for a period of 5 years and then extendable for another 5 years and further extendable to 4 years. A person released after 5 years was granted gratuity and also ex-serviceman status having been released on completion of terms of engagement. However, in the year 2006, ostensibly to make SSC more attractive, the earlier 5+5+4 years system was changed to 10+4 years thereby making the initial tenure of 10 years mandatory for earning benefits, including “ex-serviceman” status. Though from the organizational point of view, a period of 10 years may seem important so as to retain officers for a sufficient period, however from the point of view of an individual, the said period in a way becomes exploitative since neither is a person granted pension nor guaranteed employment after 10 years thereby leaving him or her “neither here nor there” at an important phase of life thereby setting him/her back by 10 years as compared to other peers from civil life. Even the military status or rank is not protected in case an SSC officer opts for Government service after release from SSC. There hence needs to be some semblance of a balance between organizational needs and individual requirements in this matter. Also, while the scheme was extended to 10 years apparently to attract better talent and to make SSC more attractive, the real reason it seems was organizational need since there were no co-extensive measures implemented at that point of time to make the scheme more attractive. The measures or additional benefits to SSC officers that were suggested are still stuck in red-tape at various bottlenecks. Moreover, in the civil services, a person if released from Government Service (other than voluntarily) in ten years, became entitled to service pension under Rule 49(2)(b) of CCS (Pension) Rules, 1972, but no such benefit was granted to SSC officers released in 10 to 14 years of service. Even a contributory pension scheme was not made applicable to such officers.

There is litigation pending on various aspects of Short Service Commission in Courts and Tribunals.

We feel that to balance out the rights between the organization and individuals, the scheme needs to be reverted back to 5+5+4 years so that a person has the option for release after 5 years of service to enable him/her to start afresh on the civil side with the additional skills gained in the defence services. It must be appreciated that when a person is released from the military after 10 years of service, he or she is in his early 30s which is an age when it becomes difficult to start new innings which may result in taking back the officer by 10 years on the civvy street. However, in case the organization feels that it is more beneficial to retain officers for at least 10 years, then additionally, to attract and retain talent, the Ministry could provide higher pay-outs and benefits to all those who serve for 10 years and still higher to those who serve till 14 years. Hence, a graded structure of benefits can be incorporated for officers who serve for 5, 10 and 14 years. In fact, though not directly related to this paragraph, we feel that the exit policy of the Services must be so structured as to allow all ranks overlooked for promotion to exit the system thereby creating vacancies for juniors in the chain. All other cases for personnel seeking to exit the system prior to being overlooked must continue to be examined on a case by case basis. We should therefore encourage measures which cater to the above.

We would also recommend a Contributory Pension Scheme on the lines of the New Pension System be considered for all future SSC officers who serve for a minimum 10 years. In fact, the New Pension Scheme itself could be extended to the SSC scheme of the defence services.

We would also recommend that all bottlenecks of the pending package of SSC officers be immediately cleared by personal intervention of the political executive so as to attract and retain talent in reality.

We have been informed that a reemployment scheme for 4 years after completion of 14 years in the SSC has been approved. We however fail to understand the logic behind any such move in the garb of making it 'attractive' since it simply results in 'using' such

officers for 4 more years without making them eligible for pension and without guaranteeing any commensurate post-release employment. Leaving such officers in the lurch after making them serve for 18 years is not exactly an attractive proposition and would further propel the perception of exploitation of human resources. To put it frankly, we fear that the move is just an attempt to cover up shortages in the garb of making it 'attractive' since a person would much rather opt for permanent commission and serve for 20 years and earn his/her pension rather than spending 18 years as an SSC officer with an uncertain future.

We have already recommended extension of ECHS to all past and future SSCOs which could replace the existing outpatient medical facilities and reimbursement scheme by Kendriya Sainik Board for serious diseases, already applicable to them (but illegally held back, as explained in **Para 2.3.1** of this Report). The political executive must again intervene here and ensure the grant of ECHS by overcoming bureaucratic and financial hurdles since the same was accepted in-principle and also announced as such by the then Raksha Mantri (**Annexure-44**).

It has also come to notice that SSCOs who seek release after completion of initial terms but during extended terms are not being considered as "ex-servicemen" since the applicable rules provide that only those SSCOs are to be treated as "ex-servicemen" who are released on completion of terms. We find that this too is an unnecessary twist to the entire issue. Once an officer has completed his/her initial terms, he/she has already gained the right to be treated as an "ex-serviceman", seeking extension of Short Service terms and then seeking release during the extended terms hardly matters once the said right has been earned. There may be a variety of reasons why a person may want to opt out of extended terms, such as, the opportunity of employment on the civil side. It would be improper to expect that a post-release employment would only fall into a person's lap co-extensive with his/her date of release! We again express hope that the establishment would show grace in such issues which are actually non-issues and arise only out of a negative interpretation of existing beneficial policies.

In view of the above, the following is recommended to overcome all existing and potential litigation related to Short Service Commissioned Officers and to ensure the retention of apt talent in the said scheme and to balance out the rights between individuals and the organization:

(a) The scheme must revert back to the 5+5+4 system rather than the 10+4 system and with universal applicability to all three services. It must be appreciated that on release from service after 10 years, a person is in his/her 30s when it becomes extremely difficult to start a second career.

(b) Since the organization feels that officers must serve for at least 10 years to be particularly beneficial to the organization, the Government can initiate a graded system of benefits after 5, 10 and 14 years- longer the person serves, better the benefits.

(c) A Contributory Pension Scheme on the lines of the New Pension Scheme (applicable since 2004 to civil servants) be considered for all future SSC officers who serve for a minimum 10 years. In fact, the New Pension Scheme itself could be extended to the SSC scheme of the defence services by working out the modalities.

(d) All bottlenecks of the pending package for SSC officers be immediately cleared by personal intervention of the political executive so as to attract and retain talent in reality.

(e) Extension of ECHS be effectuated to all past and future SSCOs which could replace the existing outpatient medical facilities and reimbursement by Kendryia Sainik Board for serious diseases, already applicable to them (but illegally held back, as explained in **Para 2.3.1** of this Report). The political executive must again intervene here and ensure the grant of ECHS by overcoming bureaucratic and financial hurdles, which in fact, was already announced by the then Raksha Mantri (**Annexure-44**).

(f) Officers who seek release from Short Service after completion of terms of engagement but while on extended terms are being denied “ex-serviceman” status which is being restricted only to those who are released exactly on the date of completion of terms. This denial results from a negative interpretation of existing provisions and all officers who have completed the terms of engagement must be granted “ex-serviceman” status as has been actually made available to them under the rules, whether they are released on the exact date of culmination of their Commission or they are released while on extended terms after the culmination of their initial terms.

7.6 Issues related to Counsel representing the Central Government before Courts and Tribunals:

It has been averred by various agencies that empanelled Central Government Counsel are not up to the mark and are unable to defend the cases properly. It has also been hinted that repeated adjournments are sought by such Central Government counsel. It has also been submitted that JAG officers may be permitted to address arguments before Courts while representing the Defence Services.

We find the above submissions a little hard to digest. Firstly, the counsel engaged to defend cases before various Courts and Tribunals are empanelled by the Ministry of Law & Justice and there are adequate checks and balances to ensure their best performance and there is a procedure wherein their services can be dispensed with in case of any complaint. We also wish to state that the loss of a bad case or the inability to defend an indefensible faulty policy cannot be simplistically ascribed to Government lawyers. There seems an element of rationalizing or justification by passing on the blame to Government Counsel or even incorrectly blaming JAG officers who are holding the appointments of Officers in Charge (OsIC) of Legal Cells and informing as such to senior officers while in reality a case itself may be based on weak foundations. Secondly, it is a known fact that due payments are not released in time to such Counsel by the defence services so as to keep them motivated enough. Thirdly, we cannot comment if repeated adjournments are by default or design but the same may or may not be a pitfall of the paltry 'per hearing' sums authorized by the Law Ministry rather than a handsome lumpsum for the entire case. Fourthly, JAG officers cannot be permitted as a matter of right to address arguments before Courts since only a person enrolled as an Advocate is authorized to do so as per Sections 29 and 30 of the Advocates Act, 1961. However it is the discretion of a Court whether to allow any other person to appear before the said Court in a particular case as per Section 32 of the said Act and this Committee has no jurisdiction to make any such recommendation or to override the provisions of law. In particular cases, JAG officers, with the leave of the Court/Tribunal, can definitely address that forum and have been addressing as such, but that discretion can only be exercised by the Court/Tribunal concerned on particular occasions.

We would however definitely state that the Ministry of Defence must have some say in the appointments of Government Counsel engaged for the Armed Forces Tribunal as per their expertise in service matters.

We are also surprised to learn that though the AFT came into existence in the year 2009, even today, after a lapse of more than 6 years, the Permanent Establishment (PE) of AFT Legal Cells has not been sanctioned which is leading to multifarious administrative problems for all concerned. This needs to be addressed at the highest level.

In view of the above, the Committee recommends that the Ministry of Defence must make out a case before the Ministry of Law and Justice for having a say in the empanelment of Central Government Counsel before various benches of the Armed Forces Tribunal. The Committee also recommends that to keep the motivation level of Central Government Counsel high, their payments must not be delayed for more than 3 months and all pending payments of all Central Government Counsel must be released as such within 6 months from the date of submission of this Report. Financial constraints or non-approval of budgetary support for the purpose cannot, in any manner, be a valid pretext for holding back payments of Government Counsel. An efficient, prompt, honest and fair system of release of payments would go a long way in keeping the panel counsel motivated. We also recommend that the Permanent Establishment (PE) of the AFT Legal Cells must be sanctioned on priority since the said cells are functioning on an ad hoc basis even 6 years after establishment of the AFT. The said action is recommended to be completed within 6 months from the submission of this Report.

7.7 Empanellment of Prosthetic Centre on the civil side for disabled veterans and other topical matters concerning them:

It has been submitted to us by disabled veterans that they are required to travel to Pune to the Artificial Limb Centre (ALC) for repair/replacement of their artificial limbs. This makes the whole concept not only redundant but also extremely difficult to execute since most of such veterans are old, infirm, living in far-off places and some even unable to undertake travel at all. To top it all, the infrastructure in India leaves is not disabled-friendly wherein there is no availability of facilities of travel, toilets or movement for the disabled. The problem is even more acute for ranks other than Commissioned Officers.

There is a need, hence, to have such facilities spread all over the country on the lines of replacement of knee and hip joints and the same can be easily undertaken by empanelling modern prosthetic centres rather than keeping the system ALC-centric. The five ALC sub-centres also possess only rudimentary facilities for basic repairs with staff that is lacking in much enthusiasm, we are informed.

There are firms with centres spread all over the country which specialize in providing such facilities and even the ALC has been outsourcing parts from such firms. Any additional cost would be subsumed with the longer life of such limbs and also travel costs as well as prolonged hospitalization which at times runs into months, as in the present dispensation.

The easiest way out would be to identify such firms and empanel them with the ECHS. To our query of any possible misuse of the facility, we have been informed that the procedure of reference through ECHS Polyclinics and recommendation by a competent orthopaedic surgeon of the nearest Military Hospital, can be instituted as in other cases.

This issue has also resulted in litigation since a Public Interest Litigation, namely **Writ Petition (Civil) 5385/2014 Disabled War Veterans (India) Regd Vs Union of India** is already pending before the Delhi High Court on the subject.

Further, each year due to various reasons, operational as well as non-operational, training/war/war-like situations/accidents etc, personnel suffer injuries resulting in disablement of varying degrees. At present, other than those who suffer operational disabilities, there is a possibility of being boarded out on medical grounds as per laid down norms. Their exit results in not only loss of time and money spent on them in training and grooming but also leaves them fending for themselves to survive.

It is well known that former defence personnel have proven themselves despite disability in various fields. Similarly, recently, two amputee soldiers participated in World Military Games and won medals. One of them also created a world record. If such tremendous talent that is available to us is equipped with technological support to replace their aids and is trained well, it can bring laurels for the nation in para-sports. Many such personnel are already trying at personal level. Here it is pertinent to mention that in a few countries, amputees are rehabilitated and supported with the type of

prosthesis which enables them to come back even to combat zones. Post Kargil conflict, there was progress in the type of prosthesis provided to amputees, however, there is much scope to improve to take it to the level of nations such as US or Israel. The same is the case with rehabilitation techniques of Paraplegics. In fact, a system could also be initiated wherein such personnel are provided with options such as sports, sedentary duties or exit from service.

There is another specific issue concerning the pensions of war disabled veterans. Ministry of Defence letter 24-02-1972, inter alia, states that for invalided out disabled war veterans, the service element will be equal in amount to the normal retiring pension of the rank held at the time of disablement, for maximum service of rank and that the awards sanctioned in this letter are in the nature of a special dispensation and will not be subject to alteration as a result of any revision of the pay and pension structure as may be sanctioned in future, it was also provided that in case of awards under the prevalent orders are 'more favourable than those sanctioned hereunder, the higher entitlement would be payable' (Para 4 of the letter).

Unfortunately, the 4th CPC implementation letter diluted the provision relating to Service Element **from** "equal to normal retiring pension of the rank counting maximum service for that rank" **to** "on the basis of his pay on the date of invalidment but counting service up to the date of his retirement" (meaning that pension calculated on the basis of 50% of last drawn pay would not be proportionately reduced for rendering service less than 33 years). As per an illustration by affected officers, after the issuance of the 1972 letter, a war invalided out Captain invalided out in or before 1972 with 4 years of service was getting pension based on his pay counting increments for full service of 24 years. However, after implementation of the 4th CPC, his pension was fixed counting increments for only 4 years. The issue has been raised in various fora and has also resulted in multiple rounds of litigation for war disabled veterans. It is currently again pending in the AFT. It seems that the issue has not been dealt with properly on file with confusing notes which do not reflect the actual position. Being a matter of war disabled personnel, we feel this needs to be addressed diligently and honestly at the highest level.

The Committee therefore recommends the following:

(a) The desirability of exploring the empanelment of firms providing modern facilities on the above lines may be explored since we feel that such an action would not only bring relief to our disabled veterans but may, in totality, also end up saving costs for the establishment besides enhancing professionalism in such a critical area.

(b) We also recommend exploration of methods to empower disabled (albeit trained) manpower by putting a system in place which allows anyone getting disabled to exercise the option of either pursuing sports or be constructively utilized at various appointments which need more usage of mental prowess than physical, such as Veteran help centres, counselling/welfare centres, liaison centres between various wings of MoD etc or opting for release on medical grounds. Tri-service Paralympics team(s) can also be considered to be constituted. The existing facilities of Army Sports Institute (ASI), Paraplegic Homes and Artificial Limb Center (ALC), Pune, can be used to support and train such team(s).

(c) The sanctity and spirit of the Ministry's commitment in its letter dated 24-02-1972 ought to be restored and pensions be calculated based on the normal retiring pension of the rank held at the time of disablement, for maximum service of rank as provided in the *ibid* letter.

7.8 Issues related to Officer-Cadets/Cadets disabled in training academies

These are issues which have not only resulted in litigation but their non-resolution displays utter insensitivity and obstinacy of the establishment and goes to show how graciousness and large heartedness is lacking in all of us.

Cadets who are disabled with an attributable/aggravated disability and boarded out of training academies are granted a disability pension which is surprisingly not called 'pension' but termed as a monthly "ex-gratia" award. This inane nomenclature has been conceptualized so that such cadets could be prohibited from falling within the category of "ex-servicemen" (since all disability pensioners are termed as ex-servicemen as per DoPT rules) and are unable to avail all such facilities that are available to pensioners. It is yet another matter of concern that this above pension (called ex-gratia) to Cadets, who are trainees for Group-A Gazetted level Commissioned Officer appointments are

granted this pension (monthly ex-gratia) which is lower than even a Recruit training to be a Group-C level Sepoy. Moreover, Recruits disabled during training are granted “ex-serviceman” status while Cadets training to become officers are not, which is clearly discriminatory. All trainees of the Central Armed Police Forces (CAPFs) of all levels, including officers, are also authorized proper disability pension if disabled during training. It is also well known that since 01-01-1973, there is no minimum qualifying service required for earning full disability pension, including ‘service element’. The “Priority I” in employment granted to such Cadets is clearly not legally binding and totally redundant resulting in almost zero benefits to any affected cadet although it has been clarified from time to time that such Cadets would be treated as ex-servicemen for the purposes of re-employment. Further, all aspects of disabilities discussed by us in detail in Chapter 2 are fully applicable to Cadets undergoing training in various training academies.

The artificial distinction put forth that such Cadets are not under the Service Acts unlike Recruits is an absurd proposition since it is just a self-invented way to refuse benefits since no external agency has cited this reason and it just a creation of fertile minds to deny benefits. Paradoxically, in certain cases, Cadets are very much under the Service Acts, for example, in the Navy they are subject to the Navy Act, 1957. It is not that somebody would have objected if the Ministry of Defence had termed the monthly “ex-gratia” as “pension”. In any case, not that the number should matter in an issue like this, we have been informed that from 1985 till 2015, there have been only 350 cases of such boarding out of cadets which is a miniscule number.

Another anomalous interpretation has been observed which is that some disabled officers granted provisional Short Service Commission in the training academies prior to grant of permanent commission (for example, the Technical Graduate Scheme), are also being treated at par with Gentlemen Cadets if boarded out from the Academies. This too is not understandable since when on paper such personnel are officers, then how could they be denied the corresponding benefits and treated as Gentlemen Cadets on the pretext of internal instructions issued by the MoD, such as Letter No 1(6)/99/Pen-C) Dated 15-09-2003.

Another problem faced by disabled cadets is the fact that they at times are boarded out in the middle of their Bachelor level courses in the academies. They then have to fend for themselves and also have to start from scratch outside without any credits for the education completed in military academies. It is felt that a system may be evolved wherein such cadets are not made to undergo their studies from scratch on the civil side thereby resulting in loss of the years spent in the academies as well as empowering them with apt professional qualifications for appropriate resettlement.

In view of the above, the Committee recommends that Cadets may be released proper disability pension at officer rates (without the MSP element) along with broad-banding, and the nomenclature of their pension be changed to disability pension rather than ex-gratia so that they can be termed as 'ex-servicemen' and enjoy all facilities admissible to pensioners. This would also remove the disparity between such Cadets vis-a-vis Recruits of the 'Other Ranks' category and also similarly places civilian trainees. Even otherwise, we expect all concerned to be gracious in such issues and not indulge in surgical objections to hold back benefits. Such issues need to be tackled with a positive frame of mind rather than with an aim of fishing for negative connotations. Officers holding Provisional Short Service Commission during training are as it is entitled to full disability benefits at officer rates which should not be denied to them on hyper-technical pretexts. The offsetting of loss of years spent in the training academies as mentioned above may also be considered in consultation with the Ministry of Human Resource Development and the cadets must be supported through professional courses which would enable their resettlement in civil life.

7.9 Issues concerning Residual Service for senior military appointments

Litigation is pending before various Benches of the Armed Forces Tribunal related to the non-grant of promotion/pay benefits to senior officers of the Army due to lack of residual service as per rules in vogue. For example, an officer of the Army of the General cadre requires a residual service of 3 years before superannuation to be able to command a corps and a similar stipulation for 2 years is applicable for the appointment as an Army Commander (GOC-in-C). There is also non-functional upgradation to the Apex Scale of Rs 80,000 available to those who are not promoted due to lack of residual service as a result of which many seniors are getting a pay lower than their juniors though their appointments may be interchangeable.

The above anomaly is a fallout of the residual service system. The said problem does not affect the Navy and the Air Force since they do not have a formation equivalent to a Corps and even the residual service prescribed for C-in-C level is 1 year unlike 3 years and 2 years for Corps Commander and Army Commander respectively in the Army.

It has been averred that the concept of “residual service” makes the entire promotional or pay progression system fortuitous and chance-based depending upon a person’s date of birth. To add to the problem, there is discretion of a waiver with the Government which can make the concept even more arbitrary in an already fortuitous system since the policy states that ‘priority’ would be granted to those with residual service and does not make the criterion totally stringent (**Annexure-78**). When we give deep thought to the issue, we find that in today’s time and age, it may not make perfect sense to persist with a system wherein say, an officer with a very high merit is unable to make it to a higher rank or appointment since he falls short of the criterion by one day and the other who is much lower in comparable merit makes it since he is above the criterion by one day, and to top it all, as mentioned above, the Government can grant a waiver at its discretion in the said criterion. The reason of ‘stability’ in support of this concept can hardly be considered valid in view of the fact that there is the stipulation of just 1 year in the other two services and that too only for C-in-C level, which reduces the element of fortuitousness to a great degree. It also appears that with changing times, the stability or continuity plank may not be holding much water since it is observed that over the years there is heavy rotation of officers on such appointments which may even be non-operational in nature (such as in HQ IDS and ARTRAC) which results in diminishing of the practicality of the postulated reason of stability or continuity in apex appointments within the military.

Though we are only concerned with litigation and are not an expert body to examine the issue, we feel that there must be a scientific analysis of the current system and a study to examine the desirability to continue with the same or not since *prima facie* it places merit or capability on a backburner while giving fillip to the fortuitous condition of the date of birth alone or factors associated with mere chance and discretion.

We therefore recommend that the Government may consider the feasibility of examining the issue in depth so as to come up with the conclusion on the merits and demerits of continuing with the system of such a high constituent of “residual service” in the Army, that is, 3 years for a “Corps” and then 2 years for a “Command” (as compared to only 1 year for a “Command” in the Air Force and Navy). It goes without saying that in case any change is finally envisaged, it must be implemented prospectively and that too only for the future after a sufficiently long time-lag so as not to affect or cause any heartburn in the higher brackets when the change, if any, is finally implemented.

7.10 Issues concerning retired Majors

Certain issues related to pensions of retired Majors have been brought to our notice which have resulted in litigation. This includes the issue wherein those Majors who retired between 1996 and 2006 with more than 21 years of service have been granted the pension of Lt Col which has been refused to those who had retired with a similar length of service prior to 1996 and also the issue of rationalization of pensions based on the fact that there was an upward revision in the cadre after the implementation of the AV Singh Committee report in December 2004 which has affected officers of various ranks who had retired prior to 2004. We have been informed that many representations on the subject have been passed on to the Ministry and also the Raksha Mantri.

We would hence recommend that a considered decision may be taken on the issue by deliberating it threadbare after due consultation with all stakeholders.

7.11 Issues concerning the functioning of the Armed Forces Tribunal

We have been informed that many issues concerning the functioning of the AFT are pending before various agencies and Ministries. It needs no emphasis that Members of Tribunals are performing judicial and quasi-judicial functions and need a stable environment free of worries and encumbrances so as to enable them to render service in an unhindered manner. It is the bounden duty of all instrumentalities to provide all such support as is necessary in that direction, but it seems that the enthusiasm in the same is lacking.

It has been brought to the knowledge of this Committee that various aspects pertaining to the accommodation of Members of the AFT in different Benches have not been addressed smoothly. We feel it would be important to bring on record the observations of the Delhi High Court in a case dealing with accommodation of Members of CAT, that is, in **Mukesh Kumar Gupta Vs Union of India 2010 (167) DLT 402** in this regard:

“23. This Court is dismayed at the utter callousness with which the Respondent has approached the present issue. The Members of the CAT are entitled to official accommodation on par with the Judges of the High Court. It is, therefore, the duty and the obligation of the Central Government to ensure that every Member of the CAT is provided official accommodation at the place of posting. If for some reason an official accommodation is not available immediately, then till such time the Central Government is bound to either take on hire or requisition an accommodation to be allotted to the Member. There cannot be a situation where a Member of the CAT is left to fend for himself or herself at the transferred place of posting.

24. One can easily imagine the predicament in which the Member of a CAT is placed when at the place of transfer where the Member joins, official accommodation is not provided for months on end. The task of being a Member, CAT is itself not an easy one. **Unless the basic facilities are afforded to the Members of the CAT, one cannot expect them to give of their best. Ensuring a calm and undisturbed atmosphere for a judicial officer is essential for effective functioning of such officer. An official accommodation is, therefore, essential for the functioning of the Member.**”

The impediments, hence, in the issue need to be addressed by all stakeholders immediately including by the Directorate of Estates under the Ministry of Urban Development for all Benches of the AFT in a proactive manner. A similar approach is required for the pending issues of non-availability of proper office/institutional accommodation for various Benches of AFT.

It has also been brought to our notice that the notification of Recruitment Rules for employees of AFT is pending and various objections have been raised time and again by the DoPT on the same. We find such procedural delays inexcusable. Once a

proposal is initiated by the AFT through its Principal Registrar with concurrence of the Chairperson, it may be given its due weightage since it is the Tribunal which is more aware of its needs and requirements and if the proposal of the AFT is generally in tune with legal requirements, then no hyper-technical objections should be allowed to prevail in this regard. Similar is the case in the matter of extension of re-employed/contractual staff and nomination of member for DPC in Group C posts. It has also come to our notice that even the appointment of Principal Registrar gets delayed since it is referred to the ACC for concurrence. We feel that such appointments should be made with the broad concurrence of Chairperson AFT rather than following cumbersome procedures since it is the Chairperson who has to utilize the officer and it is not a Central Government position under the Central Staffing Scheme or with any ramifications on the functioning of the Government per se that an ACC approval may be required.

The issue regarding provisioning of security to the institution of AFT or to Members is also pending. It has been informed that the matter stands referred to the Ministry of Home Affairs since the Delhi Police had initially refused to provide security citing lack of provision for the same in their 'Yellow Book'. We find this excuse a little hard to digest since we do not think that the mention of a new establishment such as the AFT would be available in the 'Yellow Book'. Moreover, the issue is no longer *res integra* since it has been decided for the members of the Central Administrative Tribunal by the Supreme Court in **In re: Incident Related to criminal intimidation to Member of CAT Vs Union of India** (Writ Petition (Criminal) No. 23 of 2008 decided on 25-08-2009) and hence such reasons for not giving effect to the spirit of the decision do not cut much ice.

It has also come to our notice that the Ministry has not favoured the initiation of Lok Adalats where cases, especially those covered by decisions which have attained finality, could be referred for speedy resolution. It must be placed on record here that Lok Adalat is a national effort which even the Hon'ble Prime Minister has endorsed as recently as on 09-11-2015 and any resistance to the concept goes against the very grain of the thought-process of the nation's highest executive.

In view of the above, this Committee recommends that all matters related to the smooth functioning of the AFT as mentioned above, including administrative issues, be resolved within a period of 6 months from the submission of this Report by personal interaction of the concerned officers with all agencies involved, and if required, by intervention of the highest echelons of the Ministry. The opinion of the Chairperson AFT on such matters be always given due weightage and utmost regard since the Tribunal is much more sensitized about the problems related to its smooth functioning than any other entity. We must also underline that unnecessary and hyper-technical queries reflecting an element of red-tape may not be indulged in time and again with the AFT since it is a judicial body and not an ordinary Government department. We also strongly propose that the concept of Lok Adalats must be initiated keeping in view the focus of the Government and even that of the Prime Minister on the same.

7.12 Issues concerning Territorial Army

Due to the reason of unique service conditions of the Territorial Army (TA), a variety of anomalies have cropped up in their pensionary and service conditions, some of which have been forwarded to us by D(GS-III) of the Ministry.

The first issue is that of grant of pension under the 'Late Entrant Clause'. As per Pension Regulations, officers who are released from service with a qualifying service between 15 and 20 years are entitled to pension being 'Late Entrants' as per Regulation 25(a) of the Pension Regulations for the Army, 1961. Regulation 292 further equates the provisions for the TA with those of the Regular Army except where inconsistent. It may be pertinent to note here that pension was introduced for TA in 1985 much after the inception of the Pension Regulations of 1940 or 1961. Despite the provision of Regulation 292, the concept of pension for late entrants was being refused to TA officers which led to multiple litigation wherein it was held that the said concept would apply to TA officers too. It is a matter of great concern that despite the fact that the decisions were upheld by the Supreme Court, the establishment continued filing Civil Appeals in cases of similarly placed officers. Ultimately, 6 out of a total of 7 Civil Appeals were dismissed but still universal orders were not issued. We feel that this tirade of appeals is purely due to administrative obduracy and once the establishment

itself has recommended the removal of this anomaly, or rather just positive interpretation of existing provisions, there should have been no question of filing of further appeals.

The second issue pointed out to us is that of denial of weightage added into qualifying service which is available to all personnel but denied to the TA on account of MoD letter dated 11-06-1985 whereby pension was initially introduced in TA. Though the TA was not meant to be a source of employment, over the years, a majority of TA personnel started opting for full-time/embodied service at par with Regular Army rather than the traditional part-time voluntary service but such personnel were denied the weightage that was available to all other defence personnel even after implementation of the 4th and 5th Central Pay Commission recommendations which did not recommend any such negative stipulation. This system continued till the 6th Central Pay Commission when it was finally discontinued. Pre-2006 retirees are however still affected. For example, a Major of the Regular Army retiring with 20 years of service was granted the weightage of 8 years and hence granted pension by treating his qualifying service as 28 years, the same was denied to the similarly placed Major of the TA, even if he was a full-time service optee with 20 years of physical embodied service. This aspect was also adjudicated judicially in favour of TA personnel but not implemented across the board. In fact, it has been informed to us that the judicial directions were to implement it for all similarly placed personnel. We feel that even this issue needs to be resolved once and for all since it has also been supported by the establishment and was also endorsed by the Ministry in the recommendations to the 6th Central Pay Commission. We are at a loss to understand that how could the establishment take a diametrically opposite view before Courts when it had itself vouched for the resolution of this anomaly before the 6th Central Pay Commission?

The third point brought to our notice is the 5% cut imposed on pensions of TA personnel other than Commissioned Officers who retire with more than 15 but less than 20 years of service. Full pension is admissible to those with more than 20 years of embodied service. It may be brought to notice that the terms of engagement of TA itself are 17 to 20 years. The existence of any such cut is *prima facie* illegal since pension is in the form of a 'property' earned by an individual and this cut which is totally illogical has no

legs to stand upon. In fact, even this issue had been taken up with the 6th Central Pay Commission by the establishment but did not find mention (neither *for* nor *against*) in the Report and it seems it skipped the notice of the Commission. Hence when the establishment was in favour of removing this negative stipulation, we again fail to comprehend why it was not removed by the Ministry itself since this negative stipulation finds mention in the MoD's letter and is not a condition imposed by an outside agency. We also place on record here that TA personnel are anyway handicapped when compared to their regular counterparts since they earn pension after a longer duration of service in view of the fact that only their embodied (physical) service is counted for pension purposes and then to further impose a cut and also not awarding weightage placing them at a triple disadvantage is totally incongruous. This issue has also been adjudicated favourably by judicial interference but not implemented across the board till date.

The fourth issue brought to us is the non-grant of service element of disability pension to personnel who are released on completion of terms or on superannuation with less than minimum qualifying service required for pension or those who are released on compassionate grounds before completion of terms. The said aspect has been determined in detail by us in **Para 2.2.11** of this Report. The fifth issue concerning broad-banding is also a common issue deliberated by us in **Para 2.2.10** of this Report.

There are also some other issues that affect service conditions of TA personnel which require the attention of the Ministry. Modified Assured Career Progression (MACP) has not been applied to TA personnel despite the fact that there was no such disabling stipulation in Special Army Instruction (SAI) 1/S/2008 vide which the same had been introduced. There was no such negative stipulation also in the Gazette Notification vide which the scheme was introduced after Cabinet approval. The same is being denied to TA personnel on hyper-technical grounds and it is also being said that the issue should be referred to the next Pay Commission. We find this approach totally faulty since the anomaly has only emerged out of interpretational differences and is, to put it strongly, an anomaly merely existing in the minds of some since no such denial has been effectuated in the Gazette notification or the SAI dealing with the subject. In fact, the SAI makes it abundantly clear that it is applicable to TA. The question also arises that

why should a point of the 6th CPC be tagged with the 7th CPC only because of the fact that due to an internal negative interpretation the benefits have been denied to TA personnel? It has also come to notice that due to wrong interpretation of rules and regulations, Subedars of the TA are not being promoted to the rank of Subedar Major which is available to JCOs of TA as per provisions of the statutory TA Regulations. Immediate steps need to be taken to address this potential area of dispute and provide for such promotions which are authorized under the rules so as to maintain the morale of the cadre and not make them feel inferior in any manner. We also find that widows/families of TA personnel dying in harness but during the period of 'disembodiment' (demobilized state) are not granted ordinary family pension. We feel that this issue may be considered favourably since such personnel remain on the strength of TA and also on the rolls of their units even while on disembodied state and if families of regular military personnel who die due to non-service related causes or while on leave or while on furlough are entitled to ordinary family pension, then by same logic even families of TA personnel should not be refused the same.

We also feel that there is another potential area of dispute and litigation in the way embodiments and disembodiments in the TA are handled on the cadre management front at the commissioned officer level. Though we find that under the current dispensation there is not much upheaval in this regard but we feel that the relatively smooth management as is currently existing should not be personality oriented and must be institutionalized for the future too. As is fully known, the TA is primarily a citizens' voluntary force and not a profession *per se*. It is a unique organization wherein citizens are supposed to serve for a few days in a year to remain in touch with the military so that in case of a national emergency they may bear arms for the nation. However over the years, with the growing national need coupled with growing unemployment, almost all personnel other than commissioned ranks and even a majority of commissioned officers now opt for full time mobilization to the maximum extent possible and the organisation also (rightly) goes out of the way to keep such full-time optees mobilized (embodied) as far as feasible. The problem however emerges that personnel (mostly officers) who join the TA with the real concept in mind then ironically become aberrations and face difficulty in coping up with the requirement of

constant embodiment which is not feasible in their parent professions. The question arises that if any such person is to join to serve the Army full-time, then he may join the regular forces rather than the TA. For this reason, well placed and committed civilian gentry is not opting for TA as a result of which the basic structure of the organization of being a bridge between the society and the Armed Forces is under threat and it is also leading to legal issues. For persons seeking a TA commission with the actual concept in mind, the hallmark of TA must remain minimal dislocation from the mainstay civilian career and maximum expansion in times of war. It therefore must be ensured that individuals who are well placed and well settled on the civil side and who join the TA with the actual concept in the backdrop must not be embodied for more than the minimum statutory requirement and compulsory courses unless there is an emergency or unless they themselves volunteer for more service if their parent professions allow them that flexibility. The 'annual willingness' certificate obtained from such officers must be given due weightage and Commanders across the board must be sensitized not to force such officers into embodiment who opt only for part-time voluntary service option in their willingness certificates. Shortage of officers cannot be made up by compulsorily embodying such officers except in case of a national emergency duly notified. This seems the only way to retain well placed individuals in TA and to attract talent and individuals who may not want to make uniformed services a career. Such officers should be rather made to feel at ease that voluntary service in TA would cause minimal disturbance in their actual careers and professions. While formulating cadre management and promotional policies, care also must be taken to keep in mind the fact that the qualitative requirements must not be such which part-time voluntary officers are unable to meet otherwise there shall be a strange situation arising wherein those who follow the actual part-time voluntary concept as envisaged by the TA Act would not be able to be promoted while those who opt for full-time service which in fact is not the real charter, would be able to gain further ranks. At the same time, we are also happy to observe that those who wish to serve full-time are being provided the maximum possible opportunity by the organization. The concept of TA is so flexible, that individuals with both kind of needs, that is, full-time optees and part-time volunteers, can be appropriately adjusted with full benefit to both types of personnel and also gain to the organization.

In view of the above, the following is recommended in matters concerning Territorial Army:

(a) Implementation of the 'Late Entrant' clause of Pension Regulations to all similarly placed officers of the TA as upheld up to the Supreme Court and immediate withdrawal of the pending appeals since 6 Civil Appeals already stand dismissed by the Supreme Court. All currently pending and future litigation must be conceded in Courts.

(b) Implementation of the judicial decisions on service weightage and 5% cut on pension, across the board and no further appeals to be filed. All currently pending and future litigation must be conceded in Courts since contesting the same is anyway illogical especially in view of the fact that the establishment had itself supported the view before the 6th Central Pay Commission that such clauses were not justified and taking a diametrically opposite stand before Courts may not be justified since it is not in tune with the MoD's own internal stand.

(d) Immediate focus on service matters concerning TA as discussed above and their resolution so that disputes on the said issues are addressed without the same reaching judicial fora.

(e) Providing due fillip to the actual TA concept of part-time voluntary service with minimum dislocation from parent civil professions for those who do not wish to serve full-time, but with maximum expansion in times of an emergency.

7.13 Review and Monitoring Mechanism:

After our multiple interactions with various wings and departments of the Ministry and the Services HQ, we find that there is much *ad hocism* prevalent related to review and monitoring of litigation, policies as well as change in law as per decisions of Courts and Tribunals. The problem is so acute that even when specific policies are interpreted or even set-aside by the highest Court of the land, it is still business as usual in the official circles and no review is carried out, and if at all any review is carried out, the opinion expressed is in contravention of the law as laid down.

We feel this must change. Our exchanges and even our live experience on the issues is reflective of the fact that many of the officers just do not give due weightage to judicial orders and directions of senior officers. The two instances of the communications by the Defence Secretary and the Attorney General referred to in **Para 1.1** of the Report provide credence to this sad reality. Also lending further credence to this unfortunate

truth is the fact that even after an issue is settled by Constitutional Courts, appeals continue unabated and even similar orders are not implemented till the time affected employees file contempt or execution petitions. The majesty of law is resisted based on artificial distinctions which is compounded by the fact that honest and well-rounded inputs from all stakeholders, including affected parties, are not provided to competent authorities. Senior staff in fact is insulated from the actual reality because on inputs on file which at times are neither sincere nor robust.

Though we have recommended symptomatic review and monitoring as per specific subject matters at various places in this Report and would have further recommended that such cases be monitored by a Director or Joint Secretary level officer in the Ministry, our experience sadly points out that to tame this malaise, invocation of nothing less than a strong political will is required and the traditional official channel cannot be trusted with this task. It hence would be in the fitness of things that an officer in the Raksha Mantri's office be earmarked as OSD (Monitoring) to keep a track of all instances of cases decided against the Ministry by a High Court or the Supreme Court and then seek recommendations for corrective measures. This can be done by issuing standing instructions to all departments and wings within the MoD and the Services HQ to inform the earmarked officer in the Raksha Mantri's office that real-time information must be provided whenever a case is decided against the Ministry by a High Court or the Supreme Court along with a gist/brief of the particular case. The said officer preferably should seek inputs from all stakeholders, and if possible, from independent experts or affected persons and the matter be then placed before the Raksha Mantri for further directions.

The same officer in the Raksha Mantri's office must also be empowered to deal with all important complaints, representations and petitions (other than those provided under Statutory provisions) as per his/her wisdom and seek information from the requisite offices in a proactive manner rather than simply forwarding the said communications to the concerned wings as is the current practice. For this reason, the said officer must be adequately experienced in service related issues and should preferably be law qualified, duly sensitive to the needs and requirements of civil and military employees, disabled soldiers and widows and most importantly independent minded and not merely an

extension of the trite official setup. The officer can also be tasked to keep the Hon'ble Raksha Mantri informed on important issues raised with his office, as per his discretion.

Policy revision in tune with latest decisions, best practices and necessitated with the march of time would also fall within the domain of the OSD (Monitoring) in addition to the existing system in vogue. The implementation of this Report may also be monitored by the said officer.

We hence recommend the creation of the post of OSD (Monitoring) directly under the Raksha Mantri to review and monitor important developments, court cases and policies, especially related to personnel and pensionary issues and those affecting the morale of the serving and retired defence staff, and keep the Raksha Mantri duly informed of the same. The said officer would also be empowered to deal with all important complaints, representations and petitions (other than those provided under Statutory provisions) as per his/her wisdom and seek information from the requisite offices in a proactive manner rather than simply forwarding the said communications to the concerned wings as is the current practice. The officer would also monitor implementation of this Report directly under the aegis of Raksha Mantri's office by ensuring the accomplishment of political will with a strong top-down approach.

7.14 Lack of Judicial Review from orders of the Armed Forces Tribunal and making justice unreachable for defence personnel and their families:

Though the last recommendation of the Report, this is the most cardinal one.

One of the most important features of the basic structure of our Constitution is judicial review by the High Courts. The High Courts have steadfastly stood for the protection of fundamental rights of the citizenry and are greatly accessible because of their presence in all States. The **Seven Judge Constitution Bench of the Supreme Court in L Chandra Kumar Vs Union of India (1997) 3 SCC 261** had held that the power of the High Courts, which are constitutional Courts, to hear challenges against orders passed by Tribunals, could not be ousted. Prior to the decision in **L Chandra Kumar's** case, the orders of the Central Administrative Tribunal dealing with service matters of civilian employees, were being taken directly in appeal to the Supreme Court. **It was however**

held by the Constitution Bench in Paragraphs 91 and 92 of *L Chandra Kumar's* case that a direct appeal to the Supreme Court was too costly and inaccessible for it to be real and effective and that the Supreme Court could not become the first appellate court from the Tribunal by burdening its dockets with decisions challenged on trivial grounds.

Though the pronouncement of the Constitution Bench was rendered in the year 1997, still, when the Armed Forces Tribunal Act was drafted, a provision for an appeal directly to the Supreme Court was provided from orders of the AFT by bypassing the High Court. Further the appeal to the Supreme Court was not provided as a matter of right but was only discretionary and that too restricted to matters which involved a "point of law of general public importance" or matters so exceptional that the Supreme Court ought to hear them, and this was also only permissible after filing a separate application before the AFT seeking a "leave to appeal" to the Supreme Court. (See Section 31 of the Armed Forces Tribunal Act, 2007). While examining these provisions, the **Parliamentary Standing Committee on Defence (2005-2006), 14th Lok Sabha, in its 10th Report**, clearly opined that though an appeal was being provided to the Supreme Court in the Act, the challenges to the orders of the AFT would lie as per Constitutional provisions as held in *L Chandra Kumar's* case, to the High Courts (See Para 90 of the Report). Of course, what could not have been done directly as per Constitutional provisions and law laid down in *L Chandra Kumar's* case, was attempted to be done indirectly, by still providing a direct discretionary appeal to the Supreme Court by providing the same in Section 31 of the Act.

In short, no appeal was provided as a matter of right from orders of the AFT and the only remedy was in exceptional cases involving 'public importance' and that too directly to the Supreme Court, which again was discretionary.

The Delhi High Court, and also other High Courts, however ruled that the power of judicial review of the High Court under Article 226 of the Constitution of India was a part of the basic structure and could not be taken away and as a result of which High Courts continued exercising the power of judicial review over orders passed by various benches of AFT as was the case in Central Administrative Tribunal (CAT). The same

was challenged before the Supreme Court by the Ministry of Defence and a Two Judge Bench of the Supreme Court ultimately ruled that High Courts may not entertain petitions against AFT orders in view of the direct appeal provided in the AFT Act to the Supreme Court.

After the said decision of the Supreme Court based on the appeal filed by the MoD, **all litigants have been left remediless and have no forum to approach in case they are aggrieved by the orders of the AFT.** In fact, even the discretionary direct appeal to the Supreme Court in the minuscule matters involving “points of law of general public importance” is practically of no usage to litigants in view of not only the prohibitive cost of litigation in the apex court but also the distance and the aura of the highest Court of the land. In any case, burdening the Supreme Court with routine and regular issues directly from a Tribunal also does not configure well with the overall scheme of things since the apex court of the Country is not meant to be burdened in the form of a first appellate court for such routine matters which can well be taken care of by the High Courts. Notwithstanding the direct appeal for issues involving ‘public importance’ in the AFT Act, it was not taken into consideration by the Ministry while pursuing the appeal against High Courts’ jurisdiction that a **Three Judge Bench of the Supreme Court in Columbia Sportswear Company Vs Director of Income Tax (2012) 11 SCC 224 had already ruled that only cases involving substantial points of law of general importance could be brought directly in appeal to the Supreme Court and all other matters were to be challenged before Division Benches of High Courts (See Paragraphs 19 to 22).**

In fact interestingly, candidly, it is admitted by many that not only the private litigants but even the Government now finds it difficult to challenge some orders of the AFT which would have been much easier and smoother for both sides and also compliant with Constitutional provisions had the jurisdiction remained with the High Courts. There is no clarity as to why it was decided to challenge the jurisdiction of the High Courts thereby bringing issues to such a pass both for litigants as well as the Government! It perhaps could also be the case that the decision to take the matter against exercise of jurisdiction by the High Court over AFT orders to the Supreme Court was based on technicalities rather than practicalities. It was not even analyzed that Section 14 of the

AFT Act (dealing with original service matters) itself preserved the writ jurisdiction of the High Courts while Section 15 (dealing with appellate jurisdiction from court martial verdicts) did not preserve such jurisdiction probably because it was understood by the drafters that in case of service matters under Section 14, the AFT was the court of first instance and hence it was incongruous to provide a direct appeal to the highest court from the first court.

The net result of the situation today is such that while a civilian central government employee has a right to move the CAT for relief and if he or she is aggrieved, he/she can challenge the order before the High Court and then take it to the Supreme Court if still not satisfied, but in the case of defence personnel, the AFT becomes the first and the last court with no judicial review at all and there is a statutory bar on further appeal and only a discretionary minute scope of an appeal available to the Supreme Court if 'public importance' can be proved in a particular case. The question that arises here is that can defence personnel be placed on such lower pedestal than civilian employees, more so in light of the fact that many-a-times, the principle of service law and even the policies are common and *pari materia* between civilian and defence employees. In fact, Section 14 of the Administrative Tribunals Act, 1985, dealing with service matters of civilians is similar to Section 14 of the Armed Forces Tribunal Act, 2007, which deals with service matters of defence personnel. However while there is adequate judicial review available from orders of the CAT emanating out of the said Section for civilians, there is no judicial review from orders of the AFT.

We cannot bring ourselves to terms with the grim reality that as per the current dispensation, there is no right of judicial review for defence personnel, retirees and their families from orders of the AFT and the limited right can also only be exercised based on discretion and for which poor litigants, including disabled soldiers and widows would be expected to engage lawyers in the Supreme Court, which involves prohibitive costs, and that too by travelling from far off and remote places to the Supreme Court whereas other government employees could avail of the remedy in the High Courts within their own states from orders of the CAT at fraction of the cost. Even in other arenas where individual rights or benefits are involved, there is no other instance in our legal system where a right to challenge

the order of a Tribunal is not provided. For example, in case a person is aggrieved from an order of Income Tax authorities, he/she can challenge the same before a Commissioner of Income Tax under his/her quasi judicial powers, if not satisfied then the Income Tax Appellate Tribunal (ITAT) can be approached, if still not satisfied then the order of the ITAT can be challenged before the High Court, further if still aggrieved, then the order of the High Court can be tested before the Supreme Court. Similarly, in case of the Debt Recovery Tribunal (DRT), the order can be challenged before the Debt Recovery Appellate Tribunal (DRAT), then the High Court and then the Supreme Court. But in case of defence personnel, the AFT is effectively the first and the final Court.

In fact, in all other democracies, defence personnel and veterans have a multi-layered review process in case they are dissatisfied with judicial decisions. Again, in the United States, after a decision of the Veterans' Administration (VA), a litigant can approach the Board of Veterans Appeals (BVA), if still not satisfied, then the Court of Appeals for Veterans Claims (CAVC) can be approached, if further aggrieved, then the person can appeal in the Court of Appeals for the Federal Circuit (roughly equivalent to the High Court in India) and then to the Supreme Court of the United States. Hence, the judicial hierarchy has four judicial layers. It is also an important feature in the United States that in many instances, while an aggrieved person can file an appeal when refused relief, the Government cannot appeal if a case is decided against the establishment.

The feeble defence of Article 227(4) not allowing superintendence of High Courts over military Tribunals is of no help to the officialdom since the term 'Tribunal' appearing in Article 227(4) actually is referring to Tribunals trying military personnel under military law such as Courts Martial, as becomes clear from a study of the Constituent Assembly debate (Volume X) in pursuance of which Article 227(4) was drafted and incorporated. The said debate also shows that the final intent was not to keep the jurisdiction of High Courts even away from Courts Martial. Also, if this logic of Article 227(4) is to be accepted then Article 136(2) bars such jurisdiction for the Supreme Court too, meaning thereby that Sections 30 & 31 of the AFT Act would therefore be unconstitutional and in conflict with Article 136(2). In any case, such a defence is redundant since while Article 227 deals with superintendence, there are no such fetters in the case of Article 226 which is the source of the power of judicial review of High Courts over the AFT.

In brief, the current stipulation in the Act of a direct appeal to the Supreme Court, that too restricted to cases involving “points of law of general public importance” with no judicial review to the High Courts is in conflict with the law laid down by the Supreme Court in the Seven Judge Constitutional Bench in **L Chandra Kumar’s** case as also admitted in Para 90 of the Parliamentary Committee Report on the AFT Act (supra) which had examined the provisions of the Armed Forces Tribunal Act, before it was enacted. The current position is also in conflict with the Three Judge Bench decision of the Supreme Court in **Columbia Sportswear** case which lays down that except in cases involving substantial questions of law of general importance, all challenges against orders of Tribunals should be placed before Division Benches of High Courts. It is also against the practicalities of the day wherein litigants are being expected to avail of the effectively unachievable remedy of appeal to the Supreme Court, which, what to talk of defence personnel and their families, is prohibitory for even upper echelons of the society as recognized even by the Supreme Court in **L Chandra Kumar’s** case. The system today has become so one-sided that the Government, with a high number of Government Counsel at its disposal, challenges a high number of orders of the AFT rendered in favour of personnel/retirees directly in the Supreme Court by citing some ‘point of law of general public importance’ but private litigants are unable to avail proper legal remedy due to the inaccessibility and prohibitory costs involved in the apex Court of the country. There is also no filtration of litigation as in the case of CAT where, once the case has been filtered through the High Courts, which are Constitutional Courts, the Supreme Court is extremely slow in interfering in SLPs filed against such High Court orders since the case has already been examined by a Division Bench of a Constitutional Court.

Of course, the entire litigative process also needs to be configured with a change in attitude as recommended by us for civilian employees, that is, **that the decision of the Tribunal in favour of an employee should normally be accepted and a challenge to the same should lie before the High Court which is accessible and approachable for litigants but such judicial review in the High Court should be only initiated in exceptional cases and not as a routine, and a further challenge in**

the Supreme Court by the Government must only be in the extremely rarest of rare cases. The feasibility of laying down an internal policy regarding annual financial implication for taking cases into appeal to higher courts may also be examined. For example, in income tax cases, as per instructions, an appeal is not filed before the Income Tax Appellate Tribunal, High Court and Supreme Court unless the amount involved is more than Rs 4, 10 and 25 lakh respectively, however the MoD has even filed appeals in certain cases where the amount involved is just a few hundred rupees per month and too related to disability benefits.

In view of the above, the Committee very strongly recommends immediate attention of the political executive to the following:

(a) Process may be initiated in conjunction with the Ministry of Law & Justice for repealing Sections 30 and 31 of the Armed Forces Tribunal Act, 2007. Section 31 of the Act results in the non-availability of any judicial review against orders of the AFT to the High Court and imposes a statutory bar on an appeal even to the Supreme Court except where a “point of law of general public importance” is involved. The said Section makes it impossible for litigants to appeal against AFT decisions and even if the remedy of direct appeal had been hypothetically provided to the Supreme Court as a matter of right, still the same would involve prohibitive cost of litigation at the Apex Court and also render the entire process redundant because of the unworkable and impractical aspect of litigants travelling from all over the country to the Supreme Court for routine and regular matters which can effectively be heard and decided by the High Courts in each State.

(b) Challenges to AFT orders be made to the High Courts after repealing Sections 30 and 31 and bringing the Act in line with provisions applicable to the Administrative Tribunals. The direct discretionary appeal to the Supreme Court currently provided in the Act is not in consonance with the Seven Judge **Constitution Bench decision in *L Chandra Kumar’s case*** wherein it was held that the Supreme Court could not be converted into the first appellate court and that it is unaffordable for litigants to approach the Supreme Court directly from decisions of a Tribunal (See Paragraphs 91 & 92). The current dispensation of approaching the Supreme Court directly is also not in consonance with the decision of the Three Judge Bench in ***Columbia Sportswear case*** wherein it was held that a direct appeal to the Supreme Court was only maintainable in cases involving a substantial question of law of general importance and all other cases could only be heard by Division Benches of the High Courts. What was

constitutionally not possible directly as held in the above dicta should not have been made possible in an indirect manner by providing a direct appeal to the Supreme Court.

(c) The current arrangement is also not in consonance with the observations of the **Parliamentary Committee** (supra) examining the provisions of the Act which had concluded in Para 90 that challenges to AFT orders shall be made as per Constitutional provisions to the High Courts in view of the decision in **L Chandra Kumar's** case.

(d) The current dispensation also places defence personnel and veterans and their families at an extremely disadvantageous position wherein a civilian central government employee has a right to move the CAT for relief and if he or she is aggrieved, he/she can challenge the order before the High Court and then take it to the Supreme Court if still not satisfied, however, in the case of defence personnel, the AFT becomes the first and the last court with no judicial review at all and there is a statutory bar on further appeal and only a discretionary minute scope of an appeal to the Supreme Court is available if 'public importance' can be proved. It is important to observe here that Section 14 of the Administrative Tribunals Act, 1985, dealing with service matters of civilians is similar to Section 14 of the Armed Forces Tribunal Act, 2007, which deals with service matters of defence personnel but there is stark difference in remedy from orders passed under these parallel provisions. Paradoxically, Section 14 of the Armed Forces Tribunal Act, 2007, itself preserves the writ jurisdiction of the High Court in its text whereas Section 14 of the Administrative Tribunals Act, 1985, only preserves the jurisdiction of the Supreme Court, however still the result and the applicability have been just the opposite.

(e) We recommend that the right to challenge the order of a Tribunal in service matters should be exactly similar for civil as well as defence employees emanating out of orders of the CAT and the AFT. However, a change in attitude of Government instrumentalities must be initiated wherein the **decision of the Tribunal in favour of an employee should normally be accepted and a challenge to the same should lie before the High Court but such judicial review in the High Court should only be initiated in exceptional cases and not as a routine, and a further challenge in the Supreme Court must be in the extremely rarest of rare cases.**

CONCLUSION

8. CONCLUSION

Before we part, we must again reiterate and express gratitude to the Raksha Mantri to have taken this historically significant step of objectively and impartially examining these issues in great detail through this Committee. We also thank him for reposing faith in us to accomplish this onerous task. Indeed, some of these issues were insidious and less glamorous than what usually remains in public gaze but equally, if not more, important for the brave men and women who serve us or have served us in the past in the capacity of uniformed and civilian employees of the Ministry of Defence. We performed this task to the best of our abilities and capabilities by taking out time from our respective routines and we are proud of the fact that we were able to render the instant Report in a free and fair manner, which, when implemented on direct intervention of the Raksha Mantri, would go a long way in promoting an environment of a work culture characterized by mutual trust and harmony where the interests of employees as well as the establishment could be balanced out thereby promoting sustainable satisfaction and boosting the morale of employees and thereby also increasing productivity.

We thank the staff at all levels of the Ministry of Defence as well as the Services Headquarters for willingly assisting us and clarifying our doubts wherever called upon. We also thank Mr R Pandiyan, D(CMU)/MoD, our Member Secretary, for not once failing in his enthusiasm and making impeccable administrative arrangements for us so that we could function with the freedom of thought and without encumbrances. His staff too deserves special mention in this regard.

To conclude, we once again thank the Raksha Mantri for encouraging us to be honest and candid in our approach without any baggage, political or otherwise. It is not common for such Committees to be constituted with a clear mandate of serving those who serve us and bring comfort to them and their families in relation to their genuine grievances.

We hope we have lived up to the expectations of the public at large and we shall remain available to the Raksha Mantri for any further clarifications related to what we have recorded in this Report. Most of the underlining and emphasis supplied in various

quotes in this Report is our own and all depositions/submissions made before us by various agencies and organizations shall remain available with D(CMU). The parts dealing with specific recommendations in this Report are articulated in text boxes for the ease of reference.

Interest reipublicase ut sit finis litium

(It is in the interest of the State that there be an end to litigation)

Jai Hind

Mukesh Sabharwal
Lt Gen (Retd)

Richard Khare
Lt Gen (Retd)

T Parshad
Maj Gen (Retd)

Navdeep Singh
Advocate

DP Singh
Maj (Retd)

PROFILES

LT GEN MUKESH SABHARWAL, PVSM, AVSM, VSM (RETD)**

Lt Gen Mukesh Sabharwal served the Indian Army for over 40 years, starting his career with successfully fighting in the Indo-Pakistan War in 1971 in Jammu and Kashmir. He commanded an Infantry Battalion (Siachen and Eastern Ladakh), a Brigade in Manipur during active counter insurgency operations and 28 Infantry Division on the Line of Control in Kupwara, J&K.

He was the Corps Commander of the sensitive 15 Corps at Srinagar during the critical crisis situation of the President's Rule, arising out of the Amarnath Shrine Board agitation, and at the time of the elections in the Kashmir Valley in 2008.

As the Adjutant General of the Indian Army for three years from 2008 to 2011, he was responsible for the Human Capital Management of over 11 lakh officers and soldiers and interests of 22 lakh ex-servicemen.

Having done his schooling from St. Columba's High School, Delhi, he completed his Masters in Defence Studies from Madras University and Masters in Management Studies from Osmania University. He has a Masters in Military Arts and Science from Command and General Staff College (CGSC) University, Kansas and a Masters in Strategic Studies from US Army War College, Pennsylvania, USA. He is also an M Phil from Madras University. He has pursued the study of national security and defence during his Masters and PhD programmes.

He was awarded the Param Vishisht Seva Medal (PVSM) for distinguished services of an exceptional order as the Adjutant General of Indian Army. Earlier, he had been awarded the Vishisht Seva Medal (VSM), the Ati Vishisht Seva Medal (AVSM), and the Bar to Ati Vishisht Seva Medal (AVSM**) for conduct of counter terrorist operations in Manipur and for successfully ensuring security in the Kashmir Valley.

General Sabharwal takes keen interest in personnel and pensionary issues concerning military veterans and their families and was responsible for putting into motion some key initiatives for reduction of litigation related to disabled soldiers.

He retired from service in Sep 2011.

* * *

LT GEN RICHARD KHARE, PVSM, AVSM SM, VSM (RETD)

Lt Gen Richard Khare was commissioned in the Fifth Battalion Fifth Gorkha Rifles (Frontier Force) on 26 Dec 1966.

As a young officer, he participated in the Indo-Pak war of 1971 as part of his Battalion.

He is an alumnus of the Defence Services Staff College and has been the Brigade Major of a Mountain Brigade in an operational area and the General Staff Officer-1 (Operations) of a Division.

He commanded his Battalion, Three Five Gorkha Rifles (Frontier Force) in Operation Falcon in High Altitude Area at Sumdorong in Arunachal Pradesh at a critical period in 1986. The performance of the Battalion was lauded at all levels and recognized by awards. He was thereafter selected for the Higher Command Course at the War College Mhow and has been an Instructor in the Senior Command Wing at the War College.

He has been the Defence Advisor in our Embassy in Nepal. He was awarded the VSM in recognition of his efforts for the welfare of ex servicemen in Nepal and the conceptualization and commencement of the project for the Pension Paying (PPO) Complex in Dharan in Eastern Nepal which acts as the node for pension disbursement, medical and allied welfare facilities and also provides accommodation at Hostels, as also acts as a location for Vocational Training Centres for ex servicemen.

He went on to Command a Mountain Brigade deployed against insurgency in the East and the performance of the Brigade was recognized by a number of awards. He was also awarded the Sena Medal in operations.

He then served at Brigadier level as the Deputy Military Secretary in the Military Secretary's Branch. He was also elected as the Colonel of the Regiment of the Fifth Gorkha Rifles (Frontier Force) before being selected for the National Defence College.

He then raised and operationalized Counter Insurgency Force Romeo. The formation distinguished itself in operations and had the honour of being awarded many Shaurya Chakras and a host of other awards. General Khare was also awarded the AVSM. General Khare has had the rare privilege of having three elite Para Commando Teams under command for operations both at the Brigade and Force level.

He then moved out on Staff and served as the Director General of Military Intelligence in the course of which he was awarded the PVSM. He was subsequently the Military Secretary and Colonel of the Regiment Fifth Gorkha Rifles, till he retired in 2006.

As the Military Secretary, he was responsible for dealing with various cadre related issues of the Army, including Confidential Reports, appraisals and promotions. He takes an active interest in the welfare of military veterans and their families including those of his Regiment settled in India and Nepal.

MAJ GEN TIRBANI PARSHAD, VSM (RETD)

Having served in the Judge Advocate General's Department of the Army for about 34 years, Maj Gen Tirbani Parshad superannuated on 31 Jan 2015 as the Judge Advocate General (the Head of the Legal Department of the Indian Army). Earlier, he had also served as the Additional Director General (Litigation).

As the JAG (Army), he had been dealing with all legal matters of the Army, whether related to discipline, administration, welfare or to Defence procurement, ordnance and military operations. As a sequel thereto, he had also been intensely concerned with related arbitration and connected litigation. As the Principal Legal Advisor to the Chief of the Army Staff, he was responsible to protect the interests of the Union of India in all Courts and Tribunals. His devotion to duty fetched him Seven awards, including the VSM.

While in service, General Parshad was known for propagating observance of Human Rights in the Army, as also defending motivated allegations of violation of Human Rights before various Commissions of Inquiry.

While still serving the Army, during different stages of his career, General Parshad had the distinction of appearing and defending the Central Government and the Army in the Supreme Court and in almost all the High Courts of the Country as also before various Tribunals including the CAT and AFT as also in NHRC and other Commissions of Inquiry.

General Parshad is a law graduate of Delhi University and is enrolled as an Advocate with the Bar Council of Delhi. Presently, he is a practicing Advocate at the Supreme Court, Delhi High Court and Armed Forces Tribunal.

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NAVDEEP SINGH, ADVOCATE, PUNJAB & HARYANA HIGH COURT

Navdeep Singh is an Advocate in the Punjab & Haryana High Court practicing mostly on the *Writ* and Constitutional side and specializing in service (employment related) matters of both military and civil employees. He is the founder President of the Armed Forces Tribunal Bar Association at Chandigarh. He is a Member of the *International Society for Military Law and the Law of War* at Brussels and writes extensively on military, legal and public interest issues. He is also actively engaged in global efforts towards reforms in Military Justice and has spoken at and participated in various international seminars and conferences on the subject, including at the Yale University.

Navdeep is a former **Major** and has been a national service volunteer-reservist with the Territorial Army in the past. The Territorial Army is a unique force of volunteers who, while carrying on with their civil vocations, wear uniform for a few days in a year during their spare time in peace so that they can bear arms for the nation's defence during war and national emergencies. He has voluntarily served in counter-insurgency and operational areas during High Court vacations and has been decorated with a record number of Ten Commendations from the Army & the Air Force.

Besides civil and military service matters, he has enthusiastically worked in the fields of rights of disabled soldiers, military widows & kin and also for military and civil pensioners. He has also worked for the welfare of World War II veterans and for protection of rights, privileges and status of the military community. He regularly indulges in *pro bono* work in his profession. He has also worked with the official establishment for ameliorating the problems of the veterans.

Navdeep is the author of four books, 'Maimed by the System' being his latest.

* * *

MAJOR D P SINGH (RETD)

An alumnus of the Indian Military Academy, Maj Devender Pal Singh was commissioned into 7th Battalion of The Dogra Regiment on 6th December 1997. After mandatory basic courses, he joined his unit in Jammu & Kashmir and took part in Operation Vijay.

On 15th July 1999, he got injured due to enemy shelling and suffered grievous injuries. Initially left for dead, he survived but lost his right leg and partial hearing and suffered many injuries all over his body. He was Mentioned-in-Dispatches in the same operation.

With 100% disabilities, Maj Singh was asked to transfer from the Infantry and thus joined Army Ordnance Corp in 2001. In 2007, he was invalidated out of Army on medical grounds.

His second important innings started in 2009, when he became the first ever amputee of India to run a half marathon on an artificial leg. Post that, he ran many marathons and earned the name of "Indian Blade Runner" for his feats.

Maj Singh holds 3 Limca records, the latest being for running a successful half marathon by any amputee at high altitude.

Maj Singh runs a support group for Indian Amputees by the name of "The Challenging Ones" (TCO), where he converts the physically challenged into 'The Challengers' by using sports as means. He has successfully enabled many amputees to take up serious sporting activities. Many of them have won laurels for the country in various events.

After working on the corporate side for 7 years, Maj Singh now keeps himself busy in running marathons and events and also TCO activities. He works for the welfare of disabled soldiers and the next of kin of deceased military personnel too. He is also a motivational speaker.

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