

# Reforms in the Grievance Redress System

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## Abstract

*The members of the armed forces have been bestowed with the right to make complaints seeking the redress of their grievances. The provisions for the redress of grievance are contained in the three Services Acts and procedures have been elaborated in the Regulations. However, the regulations provide different procedures for the processing of grievance petitions, damaging the effectiveness of a statutory right. In reality, the grievance redressal system has various shortcomings, leading to the increase in the number of petitions filed in the Armed Forces Tribunal and the higher courts. There is need to replace the existing grievance redressal system with an effective, transparent, and non-vindictive mechanism which is a sine qua non of an efficient military organisation.*

## Introduction

In India, the fundamental rights of armed forces personnel are restricted by Article 33, to ensure proper discharge of duty and the maintenance of discipline. The armed forces personnel are debarred from becoming members of trade unions or associations, attending political meetings, and communicating with the press. While curtailing some of their civil liberties, the State has given armed forces personnel the right to make complaints in order to seek the redress of their grievances. The right of members of the armed forces to complain and request redress of grievances against actions of their superiors is contained in the three Services Acts: sections 26 and 27 of the Army Act (1950) and the Air Force Act

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(1950); and section 23 of the Navy Act (1957). This statutory right is not a component of 'welfare'.

### **Procedure for Redress of Grievances**

The procedure for the submission and processing of grievances in the three Services is contained in the Regulations of the respective Service.<sup>1</sup> The Army and the Air Force Acts provide that any person who deems himself wronged by any superior officer may complain to the Commanding Officer (CO) for the redress of his grievance. When the officer against whom the complaint is to be made happens to be the one to whom the complaint should be preferred, the aggrieved person may complain to the officer who is next in superiority to the officer concerned. The right to complain can be exercised only once. However, a second complaint can be allowed if fresh facts and circumstances emerge necessitating reconsideration of the case. The complainant must establish that he has been denied or deprived of something to which he has a military right.<sup>2</sup> The Navy Act states that if an officer or sailor thinks that he suffered any personal oppression, injustice, or other ill-treatment at the hands of any superior officer, he may make a complaint. Redressal applications by officers are to be addressed to the Central Government and by the personnel below officer rank (PBORs) to the respective Service Chiefs.

On receipt of a complaint, the CO is to investigate the case and, if possible, redress the grievance. If the CO is not in a position to redress the grievance then the application, along with a report from the CO, is to be forwarded to the next higher formation in the chain of command. The PBOR's statutory right is exhausted after his application has been considered and a decision has been taken by the Service Chief. The Central Government is empowered to revise the decision of the Chief, but a PBOR has no statutory right to petition the government for such a revision. While relief to the petitioner may be given by the lower authority, the final rejection of the application can only be at the level of the respective Service Chief. In case of the officers, the decision of the Central Government is final.

### **Time-frame for Processing**

The regulations of the three Services state that grievance applications are to be processed expeditiously; however, the time-

frame for processing is different in the case of each service. In case of the army, when the complaint does not contain any accusation requiring investigation, it must reach the Army Headquarters within 135 days. If the complainant has made an accusation requiring investigation, the complaint should reach the headquarters within 180 to 195 days. The regulations for the air force provide that complaints should reach the Chief of the Air Staff within 45 days of the date of submission and no intermediate authority should hold up the complaint for more than 10 days. In the event of a delay, a report explaining the reasons to delay is required to be made to the next higher authority. In the navy, the complainant can appeal directly to the next superior authority if he does not receive the final reply within a period of six months from the date of submission of his complaint.

### **The Problem**

**Inordinate Delays.** Time-frame for processing of a grievance petition is different in the case of each service. For instance, in the case of the army, when the complaint does not contain any accusation requiring investigation, it is required to reach the Army Headquarters within 135 days. If the complainant has made an accusation requiring investigation, the complaint should reach the headquarters within 180 to 195 days. Moreover, the regulations do not provide any time-frame for the Army Headquarters or the Central Government to give its final decision in the matter. Undue delays in the processing and disposal of complaints, which is often justified under the pretext that the military chain of command is engaged in making investigations, is another source of problem. There have been cases where the final decision on grievances relating to promotions has been delayed until the complainant has retired. In today's era of email, fax and cell phones, the fact that a complainant has to wait for nearly 8-10 months (in some cases even more) to get his grievance redressed is not only distressing but also worrisome. The delay in the finalisation of a complaint often frustrates the complainant, leading to dissatisfaction and demoralisation.

**Faulty Processing.** The processing of a grievance petition is faulty. The officials, who may be the root cause of the grievance, process the complaint. During the processing of a complaint, the complainant is not informed about the comments of the section

commander and intermediate authorities on his grievance application. In the case of *Union of India v. Maj Gen Arun Roye* (2008), the Calcutta High Court opined, “[...]non-furnishing of comments of the intermediate authorities to the complainant who lodged the statutory complaint is tantamount to violation of the principles of natural justice. This is because the comments that are furnished by the intermediate authorities to the Central Government are essential to the complainant, so as to enable that person to know what has been commented against him/her by the said military authority while forwarding the complaint to the Government”.

**Decision is not ‘Reasoned’.** The decision on an application is not required to be a ‘reasoned’ order and it could be conveyed in a brief sentence, such as, “Your application has been rejected by the competent authority as being devoid of merit”. Stereotype rejection orders reinforce the doubt that complaints are treated arbitrarily and against the principles of natural justice. On a number of occasions, the Supreme Court has unequivocally endorsed and underlined the requirement of giving reasons in support of an order. The failure to give reasons amounts to denial of justice. The rejection of a grievance, in the absence of any reasoning, indicates either that the authority did not listen or that it took an arbitrary decision. Reasons substitute subjectivity with objectivity. The reason given for a judgement plays a significant role in demonstrating that the person concerned has actually been heard.<sup>3</sup>

**Coercive Provisions.** In the army, if a complainant has made an accusation in the grievance petition, he/she is required to render a certificate, “I undertake that any false statement or false accusation made by me in this complaint will render me liable for disciplinary action”. In cases of the use of abusive language, misbehaviour and sexual harassment, which may take place in private, it may not be possible for a victim to support his/her accusation with any documentary proof or witness. Then the victim would be liable to disciplinary action under the Army Act based on the certificate rendered with petition.<sup>4</sup> This often deters the victim from seeking redress and makes the statutory right meaningless.

**Legal Help and Harassment.** All levels of the Service hierarchy are entitled to seek legal advice on a complaint. However, the aggrieved person is not provided any legal help for preferring his

complaint. If the grievance is against the higher authorities, the affected individual or his family may also face social seclusion and harassment. There have been allegations that those lodging complaints against their superiors have been transferred to far-flung places, causing harassment to them and their family members.

**Increasing number of Court Cases.** There has been an unusual increase in the filing of cases in the Armed Forces Tribunal and courts by the men in uniform. There are nearly 19,000 petitions pending in the Armed Forces Tribunal which demonstrates a gradual erosion of faith in the system of redress of grievance in the armed forces.<sup>5</sup> Frustration and harassment may also push personnel to alcohol dependence and cause stress-related mental disorders.

### **Grievance Redress in other Democracies**

In the United States, military persons have the right to complain and request redress of grievances against (i) mistreatment by a superior; (ii) failure to act on a request (such as a request for medical attention or a request for hardship discharge); (iii) unlawfully restricting a military person's rights; (iv) justice rights; (v) unlawful discrimination or sexual harassment; (vi) damage to, or improper seizure of, personal property.

There are several formal methods for requesting redress of grievances, including (i) complaints through the chain of command; (ii) correspondence with a Member of Congress; (iii) an Inspector General (IG) complaint for instances of fraud, waste, and abuse; (iv) an Equal Opportunity complaint for instances of discrimination or sexual harassment, (v) Article 138 Uniform Code of Military Justice (UCMJ) complaint, for instances of specific abuse, discriminatory practices of a superior officer, or for regulations not being followed by the command; (vi) Article 139, UCMJ complaint, where personal property is taken or destroyed; (vii) petition to the Board for correction of military records to change adverse entries. Complaints made to Members of Congress and the Inspector General, including Equal Opportunity complaints, is 'protected communications' under the Whistle Blower Protection Act. The complainant is protected to some extent from adverse actions deemed to be taken in 'reprisal' for their complaint. A complainant

who desires to submit a grievance may consult a military lawyer for advice and assistance in drafting.

In Canada, which was the first to establish a grievance redress system that includes an external review, separate and independent from the chain of command, the complainant is required to first submit the grievance to the CO. If the complainant is not satisfied, the CO is to forward the grievance to the Grievance Board. The Board is mandated to review all military grievances, and submits its findings and recommendations to the Chief of Defence Staff, and also to the complainant. The Board, which consists of civilians and former military personnel, has quasi-judicial powers and can summon witnesses and compel them to give oral or written evidence. It can hold a public hearing to benefit the participants and serve public interest.

In the UK, a person in Service, or one who has ceased to be subject to Service law, but thinks himself wronged in any matter relating to his service, may make a complaint under Section 334 of the Armed Forces Act 2006. The Armed Forces (Redress of Individual Grievances) Regulations, 2007 provides three modes for redressal: (i) a complaint may be lodged with the service complaint commissioner (civilian); (ii) a grievance application can be forwarded to the CO and; (iii) where a complaint has been considered by a Service Board, an officer has the right that a report on his service complaint be referred to the Sovereign.

### **Need for Reform**

Roskill (1964), in *The Art of Leadership*, has assigned the duties of a commander towards his subordinates.<sup>6</sup> He writes, "It is my belief that the Commanders should encourage their juniors to come to them with their ideas and their problems, and even with their grievances and complaints. If grievances are bottled up, discipline will suffer— probably through irresponsible talk among junior officers already condemned. Merely to be given an opportunity to state a grievance goes a long way towards eliminating it; since no responsible man will nurse a grievance after he has been brought face to face with the cause of it. Nor should the senior officer hesitate to admit error or even to make an apology, if he feels there is justice in a complaint against himself".

The 2nd Administrative Reforms Commission Report (2005) describes nine qualities of good governance. These are participation, rule of law, transparency, consensus orientation, equity, responsiveness, effective and efficient process, accountability and strategic vision of the leaders. Concerned over the increasing number of soldiers posting their complaints on social media, a new grievance redressal mechanism was started in January 2017 wherein soldiers could air their grievances directly to the Chief of the Army Staff through WhatsApp messages. This ad hoc system was conditional as soldiers had to first exhaust existing laid down grievance redress procedure. The armed forces have to revamp their grievance redress process keeping in view the principles of good governance and system of grievance redress followed in the other democracies. The government must ensure that:

- The three Services follow a uniform policy framework and timeframe for the redress of grievances.
- The final order for the redress of grievance petition is a reasoned one and be made within two months of submission of a grievance.
- Coercive provisions from the Regulations are deleted.
- The redress system is made more transparent and the authorities are held accountable for undue delay.

### **Conclusion**

The concept of military personnel having the right to grieve and receive redress is not new. In India, there is need to replace the existing grievance redressal machinery with a vibrant system under which every person can take up his redress for grievance without fear of higher authorities. If the internal grievance redress system of an organisation is effective, most problems can be resolved in-house and would be no need for employees to go to tribunals and courts to seek justice. The armed forces are an integral part of a democratic state and society. The government must understand that respect for the rights of members of the armed forces would be helpful in remedying certain malaises like stress, suicides, fragging, and shortage of personnel, which the armed forces are facing today.<sup>7</sup>

## Endnotes

<sup>1</sup> The Regulations for the Army (1987), para 364; the Regulations for the Air Force (1964), para 621 and 622; and the Regulations for the Navy (1991), Part II, para 238 and 239 prescribe procedure for submission and processing of the redress complaints. Navy's grievance Redress System is further elaborated in Navy Order 24/2007.

<sup>2</sup> For instance, non-acceptance of an officer's request for premature retirement does not constitute a service wrong under the three services Acts.

<sup>3</sup> The requirement of recording reason is one of the principles of natural justice. It is most valuable safeguards against any arbitrary exercise of power by the adjudicatory authority. Law Commission of India in its 14th report recommended that in case of administrative decisions, provision should be made that they should be accompanied by reason. The reason will make it possible to test the validity of these decisions by machinery of appropriate writs.

<sup>4</sup> Section 56(b), the Army Act, 1950. The notes to section 56(b) further states: "It is not necessary that the false statement affecting the character of an officer or other person should be directly related to the subject of the complaint. It is sufficient if the false statement is calculated to create prejudice against the officer etc., with reference to whom the complaint is addressed.

<sup>5</sup> Bhadra Sinha and Amrita N. Dutta, "Armed Forces Tribunal has 19,000 pending cases, but here's why this is least of its problems," *The Print*, March 18, 2021.

<sup>6</sup> Roskill, Capt S.W., *The Art of Leadership*, London: Collins (1964), p. 136.

<sup>7</sup> Over 800 armed forces personnel have committed suicide in the last five years, with maximum suicides reported from Indian Army, the government informed Rajya Sabha in July 2022. A total of 819 armed forces personnel committed suicide in the last 5 years, with the Army reporting a maximum of 642 such cases. Apart from Indian Army, Indian Air Force reported 148 cases of suicide in five years, while Indian Navy reported 29 cases. "Over 800 suicide cases reported in armed forces in last five years: Government," *The Economic Times*, July 19, 2022.