

# Administration of Justice in the Army

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## INTRODUCTION

On joining the Army, a new entrant, be an officer or other rank, swears away a number of basic rights which his civilian counterparts take for granted. Because the Administration takes away these basic rights, it provides for a number of safety valves to ensure that justice is available to all, without their having to agitate for it. However, of late, there is a growing tendency amongst service personnel to approach High Courts and the Supreme Court to appeal against the decisions of the Administration. In most cases the Courts have decided in their favour, some times because of the strength of the case and some times because of poor performance of the Government Counsel. The pertinent point, which must be taken note of is that this tendency to go to the courts is a 'loud protest' by officers and men of the Army against the administration of justice as it is practised these days. Even if a single case is won on merits by such a plaintiff against the Army in the courts, it should be a matter of serious concern to all of us because it reflects adversely on the dispensation of justice in the Army. It is axiomatic to review all administrative and judicial decisions so that a person, who has sworn away his right of protest in favour of a disciplined life, is granted full justice in return as a matter of normal course.

In this article I propose to identify the main areas of protest; the present system of checks and balances to ensure justice in such areas; and to suggest improvements.

## MAIN AREAS OF PROTEST

By and large the officers and men of the Army have been going to the courts in numbers which are increasing slowly but noticeably for the following reasons:-

- (a) Sentences awarded by various courts martial.
- (b) Denial of promotions.

In addition to the above, a very large number of officers, and in more and more cases, JCOs and Other Ranks also, are appealing against the Administration's decisions by putting up statutory and non-statutory complaints. This number is increasing alarmingly. These complaints mostly cover

protests against remarks made in Annual Confidential Reports; denial of promotions; loss of chances for promotion and competitive examinations; loss of seniority due to inability to pass promotion examinations; unpopular postings issued by the MS Branch and 'harassment' by senior officers.

### CHECKS AND BALANCES IN FORCE TO ENSURE FULL JUSTICE

#### DISCIPLINARY CASES

Before a disciplinary case is tried summarily or by a court martial the procedures laid down require the Administration to investigate the case thoroughly. This is usually done by holding a court of inquiry and if there is a prima facie case, the accused is identified and served with a charge sheet to help him to prepare his case and thereafter a summary of evidence is recorded. It is now upto the Commanding Officer to deal with the case summarily himself or put it up to the formation commander to do so; or to apply for a suitable kind of court martial according to the Army Act. Before arriving at such a decision, the Judge Advocate General's (JAG's) department provides pre-trial legal advice to the Administration after carefully going through the evidence recorded. During the court martial, an officer of the JAG's department advises the court on matters of law, and helps the members to arrive at a proper decision, both while determining the culpability or otherwise of the accused and the punishment. Thereafter, the proceedings of the court martial, conducted according to the provisions of the Indian Evidence Act and the Criminal Procedure Code, are confirmed by the competent authority after the JAG's department has again studied the proceedings in great detail to ensure justice. It is also pertinent to note here that, whether the accused asks for it or not, the court recommends a plea of mercy even when it is passing sentence. The case is further reviewed after confirmation to ensure that proper justice has been done.

The above system should appear to be fool proof to any lay reader. Under normal circumstances it should be fool proof. Yet it is a matter of concern that despite all these efforts, sentences awarded by courts martial, when appealed against in the High Courts and in the Supreme Court, are being increasingly set aside. I feel that the root cause of the malaise lies in the following:-

- (a) The number of JAG's department officers is infinitesimally small and they have an ever increasing load of disciplinary cases to deal with because of the enormous rise in the strength of the Army.
- (b) The pre-trial advice, during trial supervision, and the post trial review of cases is being done by the same set of Officers, thereby losing ob-

jectivity.

As far as the strength and status of the department is concerned, it is interesting to note that the JAG was a Brigadier in 1923 and he was still a Brigadier till 1982. Legally qualified officers of this department are not available below Corps level for tendering legal advice to the Commanders. At Corps level one AJAG (Lt Col) with a clerk or two handles cases from a military population of between eighty thousand to one hundred thousand troops. When he goes on leave this load is transferred to the AJAG of another Corps in addition to his own duties or it is passed on to the DJAG at Command Headquarters, where he has a small group of about half a dozen officers at his disposal for carrying out multifarious legal duties, pertaining to a population of about 250,000 odd troops.

Brigade and Divisional Commanders and their equivalents in static formations are authorised a warrant to order General and District Courts Martial and to award summary punishments to those below the rank of Major. However, the Army has not provided any Officers on their staff who can provide expert legal advice to them. On the other hand it is interesting to note that the same Commanders have been provided with Officers from the Army Educational Corps on their staff. These officers neither conduct classes nor is their advice on education of troops of any value to a Commander. These AEC Officers therefore, spend their time mostly in running the formation libraries, supervising the conduct of various tests of Other Ranks, and being incharge of sports and variety show competitions. None of these activities requires an officer, who is usually a post graduate, B Ed. However, these officers and then AEC JCOs/OR do get sufficient time to further educate themselves. Is it not ironic that we have on the staff of a formation commander, an AEC Officer who keeps himself occupied by doing almost everything but educating the troops, but for most important task of tendering legal advice for proper use of the vast legal powers vested in the Commanders, NO officer is available? What compounds the problem is that there is no organised teaching of law for officers except a Command Law Course run for a few junior officers whenever the hard pressed JAG department officers can spare some time. The officers' expertise in law is thus mostly gained by private study carried out when preparing for examinations upto Major's level. Some practical on-the-job experience which officers may have acquired in addition to this private study for the examinations is all that they know of Law. For most Officers, the Manual of Indian Military Law is a mystery. In short, expert advice is at present available in a sphere (Education) where a Formation Commander does not require it, but he is not provided with expert advice where it is urgently required (Law). This needs to be put right soonest, if our system is not to fall into disrepute by its decisions being repeatedly set

aside by the High Courts and the Supreme Court.

In view of the above, there is a case for an increase in the establishments in the JAG department so that officers can be posted on the staff of all warrant holders. If for reasons of man power adjustment, it is necessary to find matching off sets, the AEC officer on the staff of formation Commanders can be dropped and a JAG department officer posted. This is a whole time job and must not be linked with that of Staff Capt (A) of DAAG at formation Headquarters. These officers are already fully occupied. Further, a separate Branch of JAG department should process and review all legal awards made by officers in Command of troops and by the Courts Martial. For this task additional staff should be authorised at Command and Army Headquarters.

#### PROMOTION

All aspirants for promotion to NCO and JCO ranks are required to pass examinations in educational and Map Reading standards before being eligible to attend a promotion cadre course, after successfully completing which they are placed on a panel of those fit for promotion. The educational standards required for promotion are in Hindi. The minimum Educational standards for entry in the service require that a recruit should be literate in his mother tongue. Therefore, in a mixed class composition Regiment or Corps, any one whose mother tongue is Hindi is at an automatic advantage over those who do not know Hindi. In a one class Regiment, every one is at par. Since there is no fixed period during which Other Ranks can pass their educational examinations without loss of seniority, every time an OR does not qualify in the requisite educational examination in Hindi, he automatically stands a more than 70% chance of being superseded for promotion because, as mentioned earlier, promotion is awarded in order of seniority to only those who have qualified in education, Map Reading and promotion cadre tests. Since one cannot attend a promotion cadre without passing education examinations and there is no free time limit, the supersession is not only permanent but it is compounded at each stage of promotion, due to the increasing difficulty in passing examinations in Hindi by those from non Hindi speaking areas. To give an example, even a non-Hindi knowing matriculate in Tamil or for that matter in any non-devnagri script language would be superseded because he would be illiterate in Hindi. Apart from some odd protests in Quarterly Security Intelligence Reports from non Hindi speaking regiments or Corps, which have been always turned down by the Army and some parliamentary questions which have been fielded diplomatically, the people at large seem to have accepted this unfair supersession as one of 'those things'. The question is, will this acceptance of fate last? and if so, for how long, before it becomes a running sore?

Officers are granted promotions by time scale upto the rank of Major, provided their record of service has nothing adverse and they have passed their promotion examinations within the laid down time limits. To become a Captain, an officer gets six chances to appear in an examinations which has four subjects. To be promoted from Captain to Major he can attempt an examination comprising six subjects in seven chances. He can clear both these examinations one subject at a time. As long as he can clear the whole examination within the six and seven chances mentioned above, his seniority is not affected. He loses seniority only if he takes more time than what is laid down.

Promotions to Officers beyond the rank of Major are given on the basis of a selection carried out keeping their record of service in view. This record of service comprises ACRs, reports of training courses attended and disciplinary aspects if any. It will be seen that the major portion of the record of service is the ACR which is, at best, a subjective assessment. Further, the rules for promotion to various ranks and the manner in which the record of service is to be processed for such a selection are not known to the Officers at large. However, what is definitely known to all is that the record of service is processed by a computer based on some qualitative requirements, even though unknown, and an anonymous master data sheet of the record of service is gone through in great detail and as objectively as possible by a selection board consisting of very senior and responsible officers. Therefore, the usual run of appeals is against the Selection Boards. However, where these decisions on the suitability or otherwise of an officer for promotion have been challenged, the courts have sometimes decided in favour of the plaintiff. Therefore, there seems to be a necessity for publicising the qualitative requirements and the rules for promotion to various ranks and for improvement of the reporting system. We should also ensure that adverse decisions of the selection boards are automatically heard in appeal by an independent authority whose decision should be acceptable to every one.

It is surprising that whereas the number of complaints and petitions against supersession and loss of seniority from the JCOs and OR is not noticeably large, those from the officers are on the increase. This paradox, inexplicable as it is, needs to be taken note of and the terms and conditions of the officers, JCOs and OR should be looked into afresh.

#### REDRESS OF GRIEVANCES - STATUTORY AND NON-STATUTORY COMPLAINTS

According to the Army Rules and relevant Army Orders, Officers, JCOs and men, who consider themselves aggrieved by any decision of the Management are empowered to approach the Government of India or the Chief of

the Army Staff (through the Commanding Officer) respectively for redressal of their grievances. These complaints, according to the orders, are required to be processed at top priority so as to ensure that they reach the Army Headquarters within 45 days. This is an excellent safety valve. In practice, the Commanders in the intermediate chain of command are required to endorse their comments with particular reference to the advisability or otherwise of acceptance of these complaints. Since the complaint is usually against the decisions of the commanders, most of the complaints are rejected by the Army Headquarters or the Government of India. The reason will be apparent. It is because the original decision making body against whom the complaint has been filed also happens to sit in judgement on the validity of the complaint. Even when the Ministry of Defence reviews complaints as an independent body, it over-rides the recommendations of the Army Headquarters very rarely and that too most reluctantly.

It is a pity that a good system is not functioning at its optimum level of efficiency because of human factors. Therefore, it would be appropriate to rejuvenate this moribund system by referring all complaints to an independent body as a matter of course for automatic review. If automatic review is applied to all adverse decisions of the Management, the necessity for putting up complaints would also disappear.

#### DIRECT FEED BACK FROM THE UNITS

The Army has provided another excellent in built system of ensuring that the problems of the rank and file are brought to the notice of the Chief of the Army Staff every quarter. This is done by all Commanding Officers by sending a report directly to Army Headquarters. Since complete anonymity is maintained while processing these points, a large number of problems are brought to the notice of Army Headquarters expeditiously. However, it is a moot point as to how many of these are accepted and acted upon when put up. Here it is also worth considering whether even those suggestions considered worthy of acceptance by Army Headquarters for implementation are accepted by Government. If there is a large number of such cases, I think these should also be referred for arbitration by an independent body.

#### SUGGESTIONS FOR IMPROVEMENT

It will be apparent that the Army has made very sound arrangements for creating inbuilt checks and balances to ensure justice to All Ranks in view of their having sworn away their rights of protest. But as these systems are not functioning as well as they ought to (otherwise there would not be so many court cases against the Army and such a large spurt of complaints), there is a crying need for an appellate body which can adjudicate between -

- (a) the Administration and the Personnel;
- (b) the Army Headquarters and the Ministry of Defence, and/or Ministry of Finance (Defence);
- (c) review the decision of the court martial and summary awards; and
- (d) hear appeals against adverse decisions in promotion cases and alleged harassment by seniors to include adverse remarks in Annual Confidential Reports.

In order to improve the system, I suggest that there should be an independent judicial bench to which all cases are referred in automatic appeal. This judicial bench (Military Affairs) should consist of at least four judges and should form part of the Supreme Court (Courts of Military appeals in USA and UK exist). The Chief Justice of India should be its ex-officio head and fifth member.

The Judicial bench should have the following members:-

- (a) Chief Justice of India - Ex-Officio Chairman
- (b) Three sitting Judges - Fully committed to this bench.
- (c) Three retired representatives, one each from Army, Navy and Air Force (ex Army Commanders/Corps Commanders or equivalents could be appointed).

This will ensure that the Highest Court in the country automatically hears an appeal in all cases where punishments have been awarded either summarily or by Courts Martial. This court will also adjudicate -

- (a) all cases of statutory complaints;
- (b) points of dispute relating to welfare of troops which have not been resolved for more than one year between the Army Headquarters and Ministry of Defence and/or Ministry of Finance (Defence); and
- (c) all cases of denial of promotions.

This will ensure that writ petitions need not be filed against the Army nor would there be a necessity for any aggrieved person to approach the High Courts and Supreme Court for redressal of grievances because this special bench of the Supreme Court will automatically hear his case in appeal. It is necessary to locate this Bench at the Supreme Court to avoid further litigation in a 'higher court' even after an automatic review.

I am aware that the Management may not, in the first instance, take kindly to my suggestions that an independent judicial body should adjudicate on matters so far considered within the purview of the Army's own internal Management. However, I am equally certain that on second thoughts, it will be conceded that the flaws in our otherwise excellent system which have come up due to human factors are now making it necessary that we do not permit the vocal and moneyed personnel only to approach the courts against our system. If our decisions are to be reviewed by the Courts, it is better to so order things that this becomes a routine facility available to everyone - or ensure that the Courts do not interfere! In a closed society like ours, we should take pains to see that the present reluctance of the Courts to interfere in Service Matters does not wear off because of repeated reference to them by serving personnel and what is even more important, by repeated reversals of our decisions by the Courts. A step taken now to establish a Special Bench of the Supreme Court for Military Affairs would be more graceful than to keep losing face repeatedly.

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