DISABILITY PENSION IN THE ARMED FORCES: LEGAL FRAMEWORK, CHALLENGES, AND POLICY REFORMS

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ABSTRACT

Disability pension is a vital component of social security for Armed Forces personnel, recognizing the physical and psychological hardships endured in service. Despite clear provisions under the Pension Regulations[1] and Entitlement Rules for Casualty Pensionary Awards, serving and retired personnel, along with their dependents, are often forced to approach the Armed Forces Tribunal and higher courts to secure benefits that should be granted without dispute.

A series of recent judicial developments, including the dismissal of hundreds of appeals filed by the Ministry of Defence before the Delhi High Court and other High Courts, underscores the administrative inefficiencies and absence of a coherent policy in the implementation of disability pension. The government's approach to disability pension claims remains deeply disheartening, as courts have repeatedly observed across numerous cases. In proceedings before the Delhi High Court, honourable Justice C. Hari Shankar dismissed several such matters in a single day and even cautioned that costs would be imposed if appeals against Armed Forces Tribunal (AFT) orders were pressed further. The Court noted a recurring pattern in the government's stance rather than granting pension already awarded by the AFT, the authorities persistently drag disabled personnel into prolonged litigation.

The law, as it stands today and as discussed further in this paper, clearly defines the conditions under which disability pension is to be granted. Yet, the government continues to adopt an adversarial posture, deploying senior counsel to treat these disputes as abstract questions of legal interpretation, often disregarding the human cost involved. It is unreasonable to expect that a soldier, who has dedicated a lifetime in service of the nation and has sustained physical or mental disability in the process, should be compelled to wage yet another battle in court following retirement or invalidation from service.

Where the government falters, the judiciary has stepped in to bridge the gap, ensuring that justice is not denied. However, the broader concern remains: what message does this send to the youth aspiring to join the armed forces if

the state fails to honour even the most basic entitlements of those who sacrificed their health in service of the country?

This paper undertakes a critical analysis of the legal and regulatory framework governing disability pensions, the evolving jurisprudence of constitutional courts, and India's obligations under international conventions such as the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD[2]). It further demonstrates how restrictive rules, and repeated appeals dilute the welfare character of pension law. In conclusion, the paper advances recommendations for systemic reform, stressing the importance of adopting a humane and consistent policy framework that safeguards the dignity of disabled soldiers and ensures timely, litigation-free access to their entitlements.

Introduction

Disability is defined under section 4(b) of Entitlement Rules, 2023[1] as "*a condition of a person resulting in long term physical, mental, intellectual or sensory impairment which in interaction with barriers, hinders full and effective participation in society, equally with others. In respect of Armed forces personnel, a 'Disability' also means a functional impairment that inhibits an individual from effectively discharging duties of a military nature or to be provided an alternate employment within the service, even though the individual may otherwise be fit to participate normally in civil society*." Such impairment leading to the discharge or death of an army personnel stems their right to disability pension, which is defined under Section 4(e) of Entitlement Rules, 2023[2], as "*a monthly composite pension compromising of a Service Element and Disability Element, each calculated separately, as a defined percentage of the last reckonable emoluments, where the aggregate of Service Element and Disability Element shall in no case be less than 80 percent of the last reckonable emoluments*." Disability element constitutes of two factors; aggregation and attributability, by the service, of the disease leading to disability.

The judiciary has consistently recognized that disability and disease are inherent risks of military service, given the harsh and unpredictable conditions in which soldiers serve. As emphasized in Union of India v. Ex Sub Gawas Anil Madso[3], the Court noted that "the possibility of disease and disability comes as a package deal with the desire and determination

[1] Ministry of Defence, *Entitlement Rules for Casualty Pension & Disability Compensation Awards to Armed Forces Personnel, 2023* (New Delhi: Government of India, 2023), sec. 4(b).
[2] Ibid 1.

to serve the country." The judgment further stressed that the State carries a moral and legal obligation to ensure that those rendered unfit for service due to ailments attributable to or aggravated by duty are not left unsupported. Disability pension, therefore, is not an act of charity but a rightful entitlement, serving as the nation's acknowledgment of the sacrifices made by its armed forces.

Disability pension for Armed Forces personnel is granted by the respective Pension Sanctioning Authorities (PSAs) of the Ministry of Defence (MoD), based on recommendations from the service headquarters and medical boards. Normally, the AFT has been pro-servicemen in its judgments. However, the MoD has increasingly resorted to legal battles against military pensioners, challenging disability benefits where the AFT delivered a favourable verdict to servicemen. "*Currently, around 16,000 such cases regarding disability claims are pending in various courts across the country. In December 2014, the SC dismissed nearly 900 old appeals filed against verdicts favouring disabled soldiers*."[3]

In 2015, Committee of five (05) member Experts was constituted by Defence Minister Manohar Parrikar on review of litigation and redressal of grievances, submitted in its report[4].

That many appeals in military service matters 'are fuelled by prestige and official egotism'. The committee has recommended immediate withdrawal of appeals filed by MoD in service and pension cases affecting disabled soldiers and widows which have been interpreted in the favour of employees and have attained judicial finality at High Court or Supreme Court level, but in which the establishment is still filing appeals. This includes issues related to declaration of in-service disabilities wrongly as 'neither Attributable to, nor Aggravated by Military Service' by the system and injuries sustained while on authorized leave.

High Court in *Union of India v. CDR AK Srivastava*[5], imposed a fine of Rs 50,000 on the Ministry of Defence (MoD) and the Indian Navy for appealing against an order of the Armed Forces Tribunal in a disability pension case, despite the law being already settled by the Supreme Court. This is not the first time the MoD has faced penalties for excessive litigation.

[3] "War over the wounded | Defence: Disability pensions", https://www.indiatoday.in/magazine/defence/story/20241216-war-over-the-wounded-defence-disabilitypensions-2646397-2024-12-07

[4] Ministry of Defence, "Review Of Service And Pension Matters Including Potential Disputes, Minimizing Litigation And Strengthening Institutional Mechanisms Related To Redressal Of Grievances [2015]" , https://mod.gov.in/dod/sites/default/files/Reportc051020_0.pdf

[5] [2024] SCC OnLine Del 8044.

In 2017, the Supreme Court imposed costs of Rs 1 lakh on the MoD for filing appeals against disability pension granted to soldiers. In 2022, the Supreme Court again expressed its displeasure at the MoD's actions. Moreover, the morale of the armed forces requires absolute and undiluted protection and if an injury leads to loss of service without any recompense, this morale would be severely undermined.

Legal Framework Governing Eligibility for Disability Pension

Disability pension is to be granted to an individual who is invalided from service on the account of disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over. The question of attributability and aggravation of disability is to be determined under the Entitlement Rules for Casualty Pensionary Awards, 1982 , continued by Entitlement Rules of 2008 read with the Entitlement Rules for Casualty Pensionary Awards, 2008 and the Guide to Medical Officers[4] (Military Pensions), 2002.

As summarised in Union of India V. Ex Sub Gawas Anil Madso[6], "the rules/executive instructions on which decision in Dharamvir Singh[5] was rendered. They are-"

The 1982 Entitlement Rules[6],

(a) Rule 5[7], which presumed that every member of the service was in sound physical and mental condition, except as regards disabilities noted at the time of his entrance into service, and that, therefore, any subsequent deterioration in the condition of his health was attributable to military service,

(b) Rule 9[8], which insulated the claimant officer from having to prove his entitlement, and also gave him the benefit of any reasonable doubt, especially in field cases,

(c) Rule 14(a)[9], which provided that, even if the onset of the disease was not attributable to the military service, it would have to be examined whether military service contributed towards any subsequent aggravation in the course of the disease,

[6] *Entitlement Rules for Casualty Pensionary Awards, 1982* (Ministry of Defence, Government of India).
[7] Ibid 12.
[8] Ibid 12.
[9] Ibid 12.

(d) Rule 14(b)[10] which, like Rule 5, provided that, in the case of diseases, the disease which led to the officers discharge or death was arisen in service, if no note of the existence of the disease was made at the time of entrance of the officer into service, *subject to* reasoned medical opinion to the effect that the disease could not have been detected on medical examination prior to acceptance of the officer for service, in which event the presumption that the disease had arisen in service would not arise, and

(e) Rule 14(c)[11], which required, even in the case of a presumption that the disease had arisen in service, further evidence that the conditions of military service determined or contributed to the onset of the disease.

Further, in Union of India v. Rajbir Singh[8], (2015) the Court reaffirmed the principle laid down in Dharamvir Singh[7], holding that any deterioration of health after entry into service must be presumed attributable to military duty, unless convincingly disproved. The Court reiterated that this presumption is deeply rooted in the Pension Regulations[9] and Entitlement Rules. The need for the Release Medical Board (RMB) to provide cogent reasons while rebutting the presumption of attributability or aggravation arises from the principle that the benefit of doubt is to be extended to the personnel under examination. To dismiss a claim without even a whisper of reasoning as to why the disability is not connected to service is neither fair nor just. The onus of proving such entitlement does not fall on the aggrieved soldier; rather, as clearly stated in the Entitlement Rules, the responsibility lies with the authorities.

The 2002 Rules[12],

(i) Rule 423(a), which provided that, for the purpose of determining whether the cause of a disability or death resulting from disease was or was not attributable to service, it was immaterial whether the cause giving rise to the disability or death occurred in an area declared to be a field service/active service area or under normal peace conditions,

(ii) however, it was essential to establish a causal connection between the disability or death and the service conditions of the officer,

[10] Ibid 12.
[11] Ibid 12.
[12] Ibid 9.

(iii) benefit of reasonable doubt would be given to the officer,

(iv) if the evidence was strongly against the officer, with only a remote possibility in his favour, the case was proved against the officer with reasonable doubt, and

(v) if the evidence was evenly balanced, the benefit of doubt would be given to the benefit of the officer, in cases of field/active service,

(vi) a disease would ordinarily be deemed to have arisen in service if no note of its existence was made at the time of acceptance of the officer, and

(vii) this was, however, subject to reasoned medical opinion to the effect that the disease could not have been detected on medical examination prior to acceptance of the officer for service, in which event the presumption that the disease had arisen in service would not arise.

The 2002 Military Pensions Guide[13],

(a) para 1 of Chapter II which required, in arriving at the decision to admit or refuse entitlement, consideration of various circumstances, such as service conditions, pre-and post-service history, the etiology of the disease, verification of the wound or injury, corroboration of statements, collecting and weighing the value of evidence and, in some instances, matters of military law and discipline, and further required the Medial officers to comment on the evidence for and against entitlement with clear and understandable reasons in support, an unreasoned medical opinion being of no value whatsoever,

(b) para 7 of Chapter II, which specifically addresses the evidentiary value of the record of the officer at the time of his acceptance into service, and requires the record to be accepted as correct, *unless*, in a particular case, the record has been found to be inaccurate, leading to a different conclusion and, therefore, again clarifying that, if the disease leading to the officer's invalidation from service was not noted at the time of commencement of service, the disease would be deemed to have arisen during the period of military service, and also proceeds to identify certain diseases which ordinarily escape detection on enrolment, and

[13] Ibid 10.

(c) para 8, which requires, while assessing the entitlement of the officer, taking into consideration all documentary evidence relating to his condition at the time of entering service and during service, as well as questioning the officer regarding the circumstances which led to the advent of the disease, its duration, family history, pre-service history, and the like, so that all evidence in support of, or against, the officers claim, is elucidated, and further requires Medical Boards to ensure that opinion is on attributability and aggravation, or otherwise, are supported by cogent reasons.

In Union of India v. Manjeet Singh[10], it was observed that "The Regulations, Rules and the General Principles concededly are statutory in nature and thus uncompromisingly binding on the parties."

Medical Boards and the Determination of Disability in Military Service

Rule 18[14] of the Entitlement talks about the various Medical Boards that shall be held in respect to casualty pensionary awards to Armed Forces Personnel. Rule 18(c)[15] defines

"*Release Medical Board- which shall be held at the time of retirement, release or discharge of armed Forces personnel with a medical condition for which he/she has been placed in a Low Medical Category (Temporarily/Permanently/For Life). Entitlement-General Principles specifically stipulates that certificate of a constituted medical authority vis-à-vis invalidating disability, death, forms the basis of compensation payable by the Government, the decision to admit or refuse entitlement is not solely a matter which can be determined finally be the medical authorities alone. It may require also the consideration of other circumstances e.g. service conditions, pre-and-post service history, verification of wound or injury, corroboration of statements, collecting and weighing the value of evidence and in some instances matter of military law and dispute*."

That as per the Standard Operating Procedures (hereinafter referred to as "SOP") and applicable policies of the respondents, officers placed in low medical category, are not eligible to be considered for certain sought-after and prestigious appointments/designations and certain favourable postings and also for hard field postings or high altitude postings, which results in

[14] *Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel, 2023* (Ministry of Defence, Government of India); *Guide to Medical Officers (Military Pensions), 2023* (Ministry of Defence, Government of India).
[15] Ibid 22.

notional loss of chances for promotion to higher ranks, as well as the monetary allowances associated with hard postings and field areas. The Entitlement Rules 1982[11] included a clause of "presumption " which facilitated the grant of disability benefits to armed forces personnel by presuming certain medical conditions to be servicerelated. The Government of India, in a strategic move, removed this clause in the ER 2008. With the introduction of GMO / ER 2023, the Government of India has continued with the same detrimental regulation, while drastically altering the parameters under the new GMO 2023, with the sole aim of saving revenue rather than upholding the welfare of those who were disabled in the line of duty.

If the disease arose during service and conditions and circumstances of military duty determined and contributed to its onset, it will be regarded as attributable to service. If service conditions did not determine or contribute to the onset of the disease but influenced its subsequent course, the disease will be deemed to have been aggravated by military service. The medical board would decide on the actual cause of disability or death and the circumstances in which it originated. On the other hand, the pension sanctioning authority would decide as to whether the cause and attendant circumstances could be accepted as attributable to/aggravated by service for the purpose of pensionary benefits. Where there is no record of the officer earlier suffering from the disease or being under treatment thereof, and there is no note of disease at the time of the officer's acceptance for service, it is obligatory on the Medical Board to call for records and examine them before coming to an opinion that the disease could not have been detected prior to acceptance in service. If records are not called for or examined, or no reasons are recorded for the conclusion that the disease is not attributable to military service, it is a case of non-application of mind, and the benefit would go to the officer. It was underscored in Union of India v. Manjeet Singh[12], that a soldier discharged on medical grounds is presumed to have contracted the disability during service, unless the Medical Board provides “cogent, coherent and persuasive reasons” to rebut such a presumption. The Court cautioned that a vague or casual medical opinion cannot justify denial of disability pension.

International Commitments and Disability Rights in India

India is a signatory and a state party to the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD[14]), 2007, which it ratified in October 2007, thereby undertaking a binding obligation to ensure dignity, equality, and social protection for persons with disabilities. It is an international human rights treaty that aims to protect and ensure the full and

equal enjoyment of all human rights and fundamental freedoms by persons with disabilities. Article 28 of the UNCRPD specifically emphasizes the right of persons with disabilities to social security and adequate standard of living, which would naturally include disability pensions for ex-servicemen injured or invalided out of service. In furtherance of these commitments, India enacted the Rights of Persons with Disabilities Act[13], 2016, seeking to harmonize domestic law with the international mandate. India is a country where most of the population lives in the rural areas and accessing the health and rehabilitation services has always been a challenge. Realizing this fact our government has already taken various initiatives to 'Reach the Unreached' through its various programmes conducted by the Institutions under Government of India and also in partnership with civil society organization. Since then, the country has made significant progress in disability rights through new laws and policies. However, challenges still exist in making these rights a reality for everyone. Despite these measures, the repeated litigation pursued by the Government against disabled veterans often in disregard of settled judicial pronouncements reveals a stark inconsistency between India's global commitments and its domestic practice. The commitment to provide disability pensions is not only embedded in the pension regulations and entitlement rules for the Armed Forces, but also finds statutory recognition under the Rights of Persons with Disabilities Act, 2016.

Section 24[16] of the Act, pertains to the protection of persons with disabilities from abuse, violence, and exploitation. It outlines measures for addressing incidents of abuse, providing legal remedies, and ensuring the rehabilitation of victims.

"Social security-(1) The appropriate Government shall within the limit of its economic capacity and development formulate necessary schemes and programmes to safeguard and promote the right of persons with disabilities for adequate standard of living to enable them to live independently or in the community:

(3) The schemes under sub-section (1) shall provide for-

> *(g) disability pension to persons with disabilities subject to such income ceiling as may be notified."*

[16] Ibid 28.

It obligates the appropriate government to frame schemes for social security, mandating, inter alia, the provision of disability pension to persons with disabilities, subject to income ceilings. This reflects a broader legislative intent to safeguard the right of disabled individuals to an adequate standard of living and to live with dignity and independence. When viewed in this context, the persistent litigation by the government against disabled armed personnel who have been invalided from service on grounds attributable to or aggravated by military duty appears inconsistent with its own statutory mandate and welfare obligations.

At a broader level, this persistent contestation of entitlements undermines India's pledge towards the Sustainable Development Goals (SDGs), particularly Goal 1 (No Poverty), Goal 3 (Good Health and Wellbeing), Goal 10 (Reduced Inequalities), and Goal 16 (Peace, Justice, and Strong Institutions). Thus, the treatment of disability pensions in India is not merely a matter of internal administrative policy but also raises concerns of international accountability, highlighting a gap between India's declared stance in global fora and the lived realities of its disabled armed forces personnel.

Litigation Strategy Undermining Equality and Social Justice

One of the most significant challenges in the enforcement of disability pension rights is the Union of India's tendency to pursue repeated appeals, even after authoritative judicial pronouncements have clarified the legal position. Despite the Armed Forces Tribunal (AFT) and various High Courts consistently granting relief to disabled personnel, the Government continues to file routine appeals before the Supreme Court, creating unnecessary delay and hardship for veterans. This practice has drawn strong disapproval from the judiciary itself.

As observed by the Supreme Court: in *UOI* v. *Ex Hav. Attar Singh*[17] that there is a reason why AFT grants the benefit of the disability pension to the members of armed, which is proven to be redundant when appeals are filed against their orders in court. The government should take a beneficial or a gracious stand while dealing with such matters. *"The Armed Forces Tribunal consists of a very senior retired armed forces officer apart from a retired Judge of the High Court. In our view, every member of the armed forces, who gets the relief of grant of disability pension from the Tribunal, need not be dragged to this Court"* These senior retired armed force officers and the retired judges are the combination of experience and law interpretation that is

[17] Order dated 30 January 2025 in *CA 10637/2024* (Supreme Court of India).

required to handle such a matter, hence filing an appeal against their every order is contrary to the reason for having such competent judicial authorities such as AFT.. There has to be some scrutiny before a decision is taken to drag the members of the armed forces to this Court.

The principle of social justice holds immense significance in the context of military personnel, particularly because they serve in highly adverse and life-threatening conditions. Soldiers who sustain service-related disabilities, or those who have rendered long years of duty in high-risk and high-altitude terrains, represent a vulnerable class of society that merits special protection and care from the State. The doctrine of social justice requires that the State extend favourable and benevolent measures to such individuals, ensuring that their sacrifices are recognized through policies such as pensions and disability benefits. However, the pattern being observed in such matters is contrary to the basic foundation of the idea of social justice has also given in our constitution. Instead of enabling easy access to benefits, these appeals have imposed additional hurdles, thereby undermining the very spirit of social justice. In practice, this approach has resulted in the unjust deprivation of benefits, despite the clear mandate that those who serve in the most demanding and hazardous environments must be treated with compassion and fairness.

The observations of the Supreme Court in Pani Ram[15] v. Union of India the Court applied Article 14 to situations of unequal bargaining power, holding that when an individual has "no meaningful choice" but to accept unfair standard-form rules, such provisions may be struck down as unconscionable. This reasoning applies with equal force to disabled soldiers who are being asked to settle for basic pension instead of the disability pension that is granted to them. The special pension provision made is not just in terms of papers but need to be applicable in order to ensure social justice. When these principles are transposed to the case of armed forces personnel, the imbalance of power between an ordinary soldier and the Union of India becomes evident. A soldier, who has already given the prime years of his life in service to the nation, cannot be said to be on equal footing with the State when confronted with complex pension rules or restrictive eligibility clauses. To compel such an individual to accept disadvantageous provisions amounts to denying him the fairness that social justice demands. Thus, applying the doctrine of social justice, combined with the constitutional guarantee of equality, it is clear that pensionary rules must be interpreted and implemented in a manner that benefits, rather than burdens, disabled veterans.

Recommendations for Reform

To address the persistent issue of disability pension litigation and to uphold the principles of welfare and social justice, certain reforms are required:

1. Establish a Permanent Policy Review Mechanism

The government should constitute a high-level review committee comprising representatives from the Ministry of Defence, Armed Forces Medical Services, veterans' associations, and independent legal experts. This body must periodically review existing pensionary regulations and entitlement rules to ensure they remain consistent with constitutional guarantees, welfare principles, and international commitments such as the UNCRPD[16]. A structured mechanism will reduce ambiguity, provide clarity in eligibility, and minimize disputes that otherwise escalate into litigation.

2. Adopt a Non-Adversarial Welfare-Oriented Approach

Disability pension claims should not be treated as adversarial proceedings. Instead, the Ministry of Defence must adopt a welfare-driven approach where the presumption is always in favour of the claimant, in line with the 1982 Entitlement Rules and judicial precedents. Training and sensitization of officials handling such cases will go a long way in reducing unnecessary rejections. A policy directive emphasizing welfare over strict technicalities can help restore faith among disabled veterans.

3. Harmonization and Clarity of Regulations

Currently, disability pensions are governed by a patchwork of regulations—Pension Regulations[17], Entitlement Rules, and the Guide to Medical Officers[18] (2002), often interpreted inconsistently. The government should consolidate these rules into a single, comprehensive disability pension code, removing contradictions and aligning medical board procedures with judicial pronouncements. Clear and uniform standards would reduce the scope for misinterpretation and conflicting decisions, thereby cutting down avoidable litigation.

4. Restrict Frivolous Appeals by the Government

As repeatedly noted by the Supreme Court, the Union of India files appeals even in cases where

the Armed Forces Tribunal has already provided reasoned judgments. A formal litigation policy must be framed on the lines of tax litigation, where appeals are restricted only to cases involving substantial questions of law. By setting monetary or legal thresholds for appeal, the government can prevent the dragging of disabled veterans into prolonged and unnecessary litigation, thereby honouring their service and sacrifice.

Conclusion

The issue of disability pensions for armed forces personnel goes beyond a mere financial entitlement, it is a matter of justice, dignity, and recognition of sacrifice. The persistent litigation pursued by the Government against disabled veterans, despite settled principles of law, reflects a systemic failure to adopt a welfare-oriented approach. Judicial pronouncements, including those of the Supreme Court, have repeatedly emphasized that policies must lean towards benefitting veterans rather than subjecting them to prolonged legal battles. As the Court has observed, "Disability pension is not an act of generosity, but a rightful and just acknowledgement of the sacrifices endured by them, which manifest in the form of disabilities/disorders suffered during the course of their military service. It is a measure that upholds the State's responsibility towards its soldiers, who have served the nation with courage and devotion." At the same time, international obligations under the UNCRPD[19] and domestic principles of social justice mandate that the State extend enhanced protection to those who have served under extraordinary risks and conditions. Unless proactive reforms are undertaken such as consolidating regulations, adopting a non-adversarial approach, and curbing frivolous appeals the cycle of litigation will continue to erode both the morale of veterans and the credibility of governance. A benevolent and just pension policy is not merely a legal requirement; it is a moral imperative that honours the service and sacrifice of those who have safeguarded the nation.

In conclusion, the purpose of writing this paper is to highlight the injustice that armed forces personnel continue to endure. Even after knocking on the doors of the Armed Forces Tribunal, they are compelled to approach higher courts to secure what is rightfully theirs—a cycle of litigation that must come to an end. Certain matters deserve to be treated with the dignity and sensitivity they demand, and disability pension is one of them. Soldiers should never be asked to prove the worth of their lifetime of service by being denied the pension they are lawfully entitled to. Their service to the nation is rendered without exception and without expectation

of reward; the least the government can do is to honour that sacrifice by granting them their rightful disability pension.

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