

# Disability Pension & Human Rights of the Armed Forces

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**Abstract:** The serving/retired officials of the Indian Army, Navy, and Air Force are aggrieved with the Guidelines to Medical Officers 2023<sup>2</sup> (*hereinafter* referred as “GMO 2023”) and Entitlement Rules for Casualty Pension and Disability Compensation Awards to Armed Forces Personnel, 2023 (*hereinafter* referred as “ER 2023”) issued by the Department of Ex-Servicemen Welfare (DESW) of the Ministry of Defence with an aim to curtail the claim of disability pension from thousands of serving and recently retired personnel in the defense forces of the Union of India.

Armed Forces officers suffer injuries during military service and due to such service they often incur disabilities. Such injuries/disabilities are certified by the medical authorities of the Indian Army/ Navy/ Air Force as being “attributable to military service” or “aggravated by military service”. Due to such injuries/disabilities, the officers are not considered eligible for promotions and /or favourable postings, since they are being regarded as “Low Medical Category” (*hereinafter* referred as “LMC”) personnel. Therefore, the officers lost out on promotional avenues and advancement in their career, due to policies pertaining to medical categories, as issued by the government from time to time.

Until 20 September 2023, *i.e.* immediately prior to the coming into force of the GMO / ER 2023, Armed Forces personnel were being governed by the provisions of GMO / ER 2008, which was beneficial legislation governing the grant of disability pension to disabled personnel of the Indian Armed Forces. Suddenly, on 21 September 2023, the government issued and implemented the GMO / ER 2023, which has a retrospective effect of taking away the entitlement for disability pension from the officers of the Armed Forces who had suffered disabilities several years ago.

**Key Words-** Guidelines to Medical Officers 2023 (GMO), Entitlement Rules for Casualty Pension and Disability Compensation Awards to Armed Forces

Personnel, 2023 (ER), Armed Forces, Human Rights, Constitution of India, 1950.

## INTRODUCTION

Earlier, the officers at least had the satisfaction that in compensation for the disability suffered by them due to their military service, they would be granted disability pension but unfortunately, the same was taken away from these officers unlawfully, by retrospectively implementing the GMO / ER 2023.

The GMO/ER 2008 was beneficial legislation that provided essential protections and benefits to Armed Forces personnel in terms of granting eligibility for disability pensions. The Government cannot retrospectively alter or withdraw these entitlements, as doing so would undermine the legitimate expectations of those affected officers and violate principles of fairness and equality under the Constitution.

The Armed Forces personnel who are retired after 21 September 2023 are also being assessed by the government on the basis of GMO / ER 2023. Such persons’ entitlement to disability pension ought to have been assessed by the government on the basis of the GMO / ER 2008, and any other rules and policies, as applicable on the day when they suffered the injury or acquired the disability. It is settled law that retrospective effect cannot be given to any law or any rules, order, bye-law, or notification having the force of law, which is not beneficial to the persons who are subject to it.

Armed Forces personnel put their every inch of lives on the line for keeping the sovereignty of this nation intact without paying any heed to their own discomfort. Considering the rigorous training and postings in inaccessible locations across the borders,

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<sup>2</sup> Press Brief On Entitlement Rules For Casualty Pension And Disability Compensation Awards To Armed Forces Personnel (ER) 2023 And Guide To Medical Officers (Military Pensions) GMO, 2023 *available at:* <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1965125>.

as an inherent feature of service in the Armed Forces, the officers perform their duties even in the fiercest situations whether be it natural calamity, counter-insurgency or safeguarding the borders of the nation from external aggression or other anti-national elements.

Supreme Court in the case of *Sukhvinder Singh v. Union of India and Others*<sup>3</sup> has held that any disability not recorded at the time of recruitment must be presumed to have been caused subsequently and unless proved to the contrary to be a consequence of military service. The benefit of the doubt is rightly extended in favor of the member of the armed forces; any other conclusion would be tantamount to granting a premium to the Recruitment Medical Board for their own negligence.

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. There exist no provisions authorizing the discharge or invalidating out of service where the disability is below 20%. Wherever a member of the armed forces is invalidated out of service, it perforce has to be assumed that his disability was found to be above 20%, and as per the extant Rules/Regulations, a disability leading to invalidating out of service would attract the grant of fifty percent disability pension.”

#### GMO/ER 2023 IS VIOLATING THE FUNDAMENTAL RIGHTS

GMO / ER 2023 violates the fundamental rights of the officers. Denial of disability pension to Armed Forces personnel who have been severely injured or disabled due to their military service violates their fundamental right to dignified living enshrined under Article 21 of the Constitution of India. Such persons may also face difficulties in carrying out a healthy lifestyle as well as in finding suitable and well-paying jobs after release/ retirement, due to the disability/ injury suffered by them in the course of their service.

The GMO / ER 2023 also violates the right to equality of persons subject to it. For instance, in case two officers were commissioned at the same time in the Indian Army and acquired the same injury/disability in the same incident, but one got retired/released prior

to 21 September 2023, would get the benefit of disability pension, but the one who gets retired/released after the said date, would not be so entitled. Therefore, GMO / ER 2023 are unconstitutional inasmuch their retrospective operation violates the right to equality of persons similarly situated.

#### IRRATIONAL CHANGE IN DISABILITY PERCENTAGE

The GMO / ER 2023 is also irrational inasmuch as many of the ailments/ injuries which until 21 September 2023 were attracting a disability percentage of 20%-50% have now been classified either as being “Lifestyle Diseases” or as attracting a disability percentage of just about 2% to 5%. The government has not averred any change in the nature or severity of the ailment, thereby rendering the reduction in disability pension percentage under GMO 2023 *sans* any medical justification. The government has arbitrarily changed the disability percentage amount which is lowering the morale of many officials in the Armed Forces, which is ultimately detrimental to the security of the nation.

It is also pertinent to point out that no prior information was available with persons serving in the Armed Forces to the effect that such new GMO / ER 2023 was going to be implemented. In case such information had been available to them, some of the Armed Forces personnel could have opted for Premature Release prior to 21 September 2023 and could have thus obtained the benefit of the previous GMO / ER, under which they would have been entitled to disability pension based on the percentage of disability as awarded to them by the competent medical authorities of the Armed Forces.

The new GMO / ER categorizing certain conditions as "lifestyle diseases" does not account for the unique lifestyle dictated by military service. The demanding routines and extreme conditions imposed by the Army contribute significantly to these conditions. As such, the assessment of such diseases must consider the impact of military service to ensure fair treatment for Armed Forces personnel. The Government has misled these officers about the correct legal interpretations as established by the Supreme Court, as well as simultaneously misrepresenting the effects

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<sup>3</sup> *Sukhvinder Singh v. Union of India and Others* (2014) 14 SCC 364.

of the new GMO / ER 2023. These actions cause significant harm to the officers of the Armed Forces.

#### RETROACTIVE APPLICATION OF THE GMO/ER 2023

The officers of serving as well as many recently retired Commissioned Officers, from different Arms, Services, Branches, Cadres, and Departments of the Indian Army, Navy, and Air Force, have been suffering from the retrospective application of this policy as it is violating their fundamental rights to equality and life with dignity.

During the course of their military service and due to their military service, sustained certain injuries at different points in time, prior to 21.09.2023. When the officers report to the medical authorities of the Army, Navy, or Air Force, such authorities assess them on the basis of GMO / ER 2008, and accordingly, after which if the officers are declared to be suffering from medical injuries or medical conditions such as Prolapsed Intervertebral Disk (*hereinafter* referred as “PIVD”) Hypertension, Blood Pressure, Thyroid disorders, osteoarthritis, musculoskeletal conditions, otitis media, etc, which was certified by the competent medical authorities to have been caused “Attributable to Military Service” or “Aggravated by Military Service”.

The new GMO / ER 2023 guidelines have categorized several conditions as "lifestyle diseases" without properly accounting for the fact that the lifestyle of Armed Forces personnel is dictated by the nature of military service. The demanding and strenuous conditions imposed by the Army, Navy and Air Force are a direct cause of many of these conditions, which should be viewed in the context of service-related factors rather than personal lifestyle choices. Surprisingly, the list of ailments/diseases classified in GMO/ER 2023 as “lifestyle diseases” include PIVD, Hypertension, Blood Pressure, Thyroid disorders, osteoarthritis, musculoskeletal conditions, otitis media, etc

#### STANDARD OPERATING PROCEDURE

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 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” included a clause of "presumption" which facilitated the grant of disability benefits to armed forces personnel by presuming certain medical conditions to be service-related. The Respondents, in a strategic move, removed this clause in the ER 2008. With the introduction of GMO / ER 2023, the Respondents have 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.

Research studies conducted by the Armed Forces Medical College have focused on the health impacts faced by soldiers serving at high altitudes. One of the significant studies is: “Epidemiology and pathophysiology of vascular thrombosis in acclimatized lowlanders at high altitude: A prospective longitudinal study”. Significantly higher incidence of hypertension among soldiers deployed in high-altitude regions compared to those serving in low-altitude areas. Soldiers in high altitudes found that a large percentage developed hypertension during prolonged deployments.

The prevalence of hypertension at altitudes above 3,000 meters can be as high as 25-40% among military personnel. Age, duration of stay, genetic predisposition, and pre-existing conditions are additional risk factors that contribute to the high prevalence. Soldiers who are already predisposed to or suffering from hypertension find their condition worsened at high altitudes. The combined effect of environmental and physiological stressors accelerates the progression of hypertension, increasing the risk of complications like cardiovascular diseases, strokes, and organ damage and various other medical injuries. For example, hypertension at high altitudes is often attributable to military service, as the environmental conditions directly contribute to the onset or aggravation of the condition.

Under the previously applicable rules/guidelines (GMO / ER 2008), such conditions were recognized as service-related, making the disabilities eligible for disability pensions. The revised guidelines (GMO / ER 2023) have challenged this established recognition, potentially disqualifying soldiers from

receiving disability benefits for injuries/disabilities such as hypertension, PIVD, Hypertension, Blood Pressure, Thyroid disorders, osteoarthritis, musculoskeletal conditions, otitis media, etc. However, the retrospective implementation of GMO / ER 2023 now unlawfully denies them the benefits they are legitimately entitled to. This change is a critical issue that undermines the principle of social justice and raises concerns about arbitrary policy shifts.

#### MEDICAL CONDITIONS AND THEIR ASSESSMENT

for instance, musculoskeletal conditions such as neck pain and back pain are common due to the physical demands of military life, while mental and behavioral disorders can arise from deployment in high-altitude areas (HAA), isolated posts, or submarines. Further, osteoarthritis in weight-bearing joints, otitis media due to respiratory infections, and para-paresis from infections, as well as hearing and auditory issues, are service-related ailments.

Specific conditions like deep vein thrombosis, chronic venous insufficiency, varicose veins, and vascular diseases result from prolonged standing, high-altitude service, or extended flight durations. Moreover, acute limb ischemia, vasculitis from frostbite, pulmonary eosinophilia from desert deployment, altitude decompression sickness, urolithiasis due to climate adaptation failure, hypertension, bronchial asthma, and cardiovascular diseases such as coronary artery disease and cardiomyopathy are all linked to the extreme environmental challenges faced by military personnel.

The assessment of these conditions, including retinal diseases, appendicitis, diabetes mellitus, barotrauma, cerebrovascular accidents, strokes, and decompression sickness, must recognize that they are directly related to the Army's dictated lifestyle. The stringent conditions in the GMO 2023 disproportionately affect personnel by attributing these ailments to "lifestyle diseases," ignoring the undeniable fact that these health issues arise from service-specific factors like high-risk environments, extreme temperatures, and strenuous physical duties.

Officers who are suffering from a disorder called PIVD, are left to endure prolonged lower back pain, which undoubtedly arose due to their consistent exposure to the stress and strenuous routine of Army

service. The deformity resulting in PIVD has worsened, is attributable to their service, and requires compensation in accordance with the GMO/ER of the year 2008.

The cause of ailment can be ascertained from a study conducted by the National Library of Medicines and published by the National Institute of Health ["NIH"] which states that PIVD is a discrete clinical entity wherein the posterior longitudinal ligament gives way and the disc material herniates into the spinal canal. The incompetence of the posterior longitudinal ligament can be a result of vertical spinal instability or can be a result of an acute stretch related to sudden exertion or bending". "PIVD causes many complications and inadequate treatment can lead to lasting irreversible nerve damage and neuropathic pain in patients with severe nerve root compression.

In *CPO LOG (MAT) Rashmi R Nayak (Retd) v. Union of India & Ors (OA 866/2019)*, one of the issues before the Ld. AFT Principal Bench was to decide as to whether the Armed Forces personnel prone to PIVD shall be granted disability pension or not. While arriving at its decision, the tribunal, (whose Administrative Member was Dhiren Vig, a senior retired Rear Admiral Rank Officer, well versed with military matters) relied upon a letter dated 26.04.2019 issued by the Ministry of Defence bearing Ref. No. 16036/RMB/IMB/DGAFMS/MA.

The GMO/ER 2023, fails to account for established medical knowledge regarding the prevalence of certain medical conditions and disabilities that are inherently linked to military service. These conditions should continue to be compensated through disability pensions, as was the case under GMO / ER 2008, provided that the disability was acquired prior to 21.09.2023. As per the SOP of the Indian Army, Navy, and Air Force, each officer or jawan who has been placed in the Low Medical Category is mandated to undergo routine medical examinations for reassessment of their medical conditions. Such reassessments are termed "Re-categorisation Boards", or "Re-cats", for short.

#### AFTERMATH OF THE ISSUANCE OF MEDICAL CERTIFICATES

When medical certificates are given by the said medical authorities, the personnel on the basis of GMO / ER 2008, are awarded disability percentages that were substantially higher than the disability

percentages now being awarded under GMO / ER 2023., accordingly, these officers who were earlier placed in the Low Medical Category by the respondents, as per the assessment under GMO / ER 2008. Having served at difficult or prestigious appointments/designations and postings is instrumental in being considered for promotion to higher ranks. As a consequence of being in the Low Medical Category, which was either “Attributable to Military Service” or “Aggravated by Military Service”, the personnel lost out on the opportunity of favourable postings and promotions to higher ranks.

After being placed in LMC, underwent their Re-cats as per the mandate, and in each of their “Re-cats”, were assessed based on GMO / ER 2008 and were granted similar disability percentages as in the Initial Medical Boards wherein they were first downgraded as LMC for suffering from diseases like PIVD, Hypertension, Blood Pressure, Thyroid disorders, osteoarthritis, musculoskeletal conditions, otitis media, etc. For instance, PIVD arises out of extreme and prolonged stress on the lower spinal regions of the body which any person serving in the Armed Forces ordinarily undergoes during the performance of his routine duties.

It is common knowledge, as well as based on the SOP of the Armed Forces, that each person serving therein is mandated to undergo rigorous physical training, which also includes long-distance running, Route Marches, Speed Walk, March and Shoot, Battle Procedure Efficiency Test, with substantial weight in the backpack frequently. This weight ranges between 3 to 20 kgs and creates a substantial amount of stress and strain on shoulders, lower back, knee joints, and legs for prolonged durations. This is likely to develop ailments/diseases like PIVD, Hypertension, Blood Pressure, Thyroid disorders, osteoarthritis, musculoskeletal conditions, otitis media, etc.

Sometimes during highly demanding physical activities, such as Route Marches in mountainous regions, with heavy backpacks, not adequate water and nourishment are readily available, due to paucity of resources. This at times, causes further strain on the body. It is ironical that in the new GMO / ER 2023, the parameters of assessing the attributability as well as the disability percentage of almost all the ailments have been nearly overhauled, to the detriment of the Armed Forces personnel.

That the government has hidden various judgments of this Hon’ble Supreme Court for giving effect to the said new GMO/ ER 2023, wherein the Hon’ble Supreme Court has interpreted the presumption clause, and provisions of ER / GMO 2008. As per ER/GMO 2008, hypertension, for instance, was assessed at 30% for disability percentage. However, in GMO/ER 2023, without providing any rationale, the disability percentage for hypertension has been drastically reduced to approximately 2-5%, and even this reduced percentage is contingent upon the fulfillment of certain conditions.

Up to 20.09.2023, personnel suffering from hypertension were to be assessed with a minimum disability percentage of 30%. However, since 21.09.2023, under the new rules GMO/ER 2023, the same condition may now be assessed at a disability percentage of merely 5% , and that too, after satisfying certain stringent conditions. This abrupt change highlights the Government's disregard for established medical assessments and its focus on financial savings over justice for disabled personnel.

The minimum percentage of disability awardable to a person suffering from various disabilities as per ER / GMO 2008 was significantly higher than the percentages now being awarded under ER / GMO 2023. It is surprising and beyond understanding, as to what sudden changes in human anatomy have occurred that would justify the drastic overnight alteration in the percentages and attributability of disabilities.

The changes made in the GMO/ER 2023 indicates a gradual and deliberate erosion of the entitlement to disability pensions, with the primary goal of doing away with benefits previously granted to armed forces personnel under the earlier rules. The retroactive application of these rules further exacerbates the injustice faced by the Petitioners.

There are multiple judgments of the Hon’ble Supreme Court wherein the Court was pleased to decide and pronounce upon the Entitlement Clauses.

#### ALTERATION OF THE ASSESSMENT PARAMETERS

The parameters of assessment have been altered overnight, which compounded the uncertainty surrounding disability assessments and resulted in an inter-se violation of the Fundamental Right to equality for Armed Forces personnel. For instance,

the following scenarios may be considered. Major A, B, and C, who all have hypertension of the same gravity/severity from 01.01.2015, get assessed for a disability pension on three different dates, as under:

- i. Maj A gets assessed for hypertension on 20.09.2023 on the basis of the old GMO/ER and gets 30% disability awarded to him. Accordingly, he becomes entitled to receive a 50% disability pension (after rounding off) for life.
- ii. Maj B gets assessed for hypertension on 21.09.2023 on the basis of the new GMO/ER and gets just 5% disability awarded to him. Since his percentage of disability is less than 20% and cannot be rounded off to 50%, he gets zero disability pension.
- iii. Maj C had reported to the Army's medical authorities on 15.09.2023 for being assessed for the percentage of disability pension, however, the doctor who was supposed to examine him had to go on emergency leave from 14.09.2023 to 20.09.2023 and was available only with effect from 21.09.2023. Though he had reported well before 21.09.2023, he will still be assessed on the basis of the new GMO/ER and will get just 5% disability, which will be rounded off to 0%. Maj C will therefore lose out on the entire disability pension which he ought to have been entitled to for the remainder of his life.

#### CONSTITUTIONALITY OF GMO 2023 & ER 2023

The Ministry of Defence has unambiguously clarified the applicability of the impugned GMO / ER 2023. The Ministry of Defence in a Press Release specifically mentioned that "*All death and disability reported/ recorded after 21.09.2023 will be governed by ER 2023 and GMO 2023*". ER / GMO 2023 are expressly stated by DESW to come into effect from 21.09.2023, as per the Frequently Asked Questions (FAQ) Page available on the website of Ministry of Defence.

Questions Nos 1 and 2 of the said FAQ state as under:

*QUESTION 1; -WHEN DO ER AND GMO, 2023 COME INTO EFFECT?*

*Answer: It is stated that there are no policy or entitlement-related changes in this ER and the same has been revised/updated keeping in view the provisions as laid down in bas MOD letter on the*

*subject dated 31.01.2001 aimed to streamline the procedure followed for assessment and entitlement without any ambiguity to avoid litigation. ER and GMO –2023 shall apply w.e.f. 21.09.2023.*

*QUESTION 2: - WHO ARE AFFECTED BY ER AND GMO-2023?*

*Answer: - All cases of death, release, discharge, retirement, superannuation and invaliding out of service w.e.f. 21.09. 2023. The cases where RMB had started prior to 21.09.2023 but finalized after 21.09.2023, in those cases the Medical Board may finalize the report as per ER/GMO- 2023.*

#### UNDERMINING LEGITIMATE EXPECTATIONS OF THE ARMED FORCES PERSONNEL

Previously, GMO / ER were beneficial legislations that provided essential protections and benefits to Armed Forces personnel. The Government cannot retrospectively alter or withdraw these entitlements, as doing so would undermine the legitimate expectations of those affected and violate principles of fairness and equality under the Constitution.

The retrospective effect of the GMO 2023/ ER 2023 is unconstitutional, insofar as the injury was incurred by the officers prior to 21.09.2023 and the disability percentage in respect of these officers should be assessed on the basis of the GMO / ER applicable at that point of time, that is, the time when the injury or disability was suffered by each armed forces personnel. Retrospective operation of non-beneficial rules and policies is unconstitutional and also militates against the basic principles of interpretation of statutes.

When personnel suffer injury or disability they believe that they will be granted disability pension due to such injury, which, as per the records of the military, is attributable to military service. After personnel or officers suffer the injury, their prospects of favourable postings and advancement in their career also suffer, since they become no longer SHAPE-1. Consequently, on the one hand, the officers suffer from physical injury due to their service and on the other hand, they lost out on the probability of advancement in their career also. The only reason for this sort of suffering is their dedicated service in the Indian Armed Forces.

#### SHAPE-1 DILEMMA

In case the officers are not medically unfit enough so as to be entitled to disability pension, their medical categories need not be lowered below SHAPE-1. This action enables the officers to advance in their respective careers and have various jobs/responsibilities/profiles, which may have also attracted Flying Allowance, High Altitude Allowance, Field Allowance, Hardship Allowance, Siachen Allowance, and other similar allowances, to them.

If officers had joined military service in a fit medical condition, but while serving the Indian Armed Forces, they have acquired a disability which makes them unfit for flying civil aircraft, or any other tasks in the civil street, after release/retirement from the Armed Forces, the least that they deserve is adequate compensation for the disability suffered by them due to military service, as has already been certified by doctors and medical authorities of the Armed Forces. It is also significant to mention that non-entitlement to disability pension also leads to non-qualification for the free medical facilities from military establishments, to which such persons were entitled before implementation of GMO / ER 2023.

GMO / ER 2023 also tantamount to discrimination between similarly situated persons since it is leading to situations wherein persons who have served the Armed Forces for a shorter duration and have taken Premature Release prior to 21.09.2023 are in receipt of disability pension, but persons who had joined the Armed Forces at the same time as them, but have chosen to continue in service beyond 21.09.2023 instead of taking Premature Release, will not be entitled to disability pension.

It is abundantly clear that the only rationale behind the Government's decision to alter the parameters under GMO 2023 is to save revenue. The such financial considerations cannot override the fundamental rights of armed forces personnel to receive adequate compensation for disabilities sustained in service

HOW ER/GMO 2023 IS VIOLATING THE FUNDAMENTAL RIGHT TO EQUALITY AND EQUAL TREATMENT BEFORE LAW?

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<sup>4</sup> *AL Kalra v. Project & Equipment Corporation of India Ltd*, (1984) 3 SCC 316.

The present GMO / ER of the year 2023 curtails the rights and benefits of the officers of the armed forces. The GMO / ER has culminated as a discriminatory policy against the class of the officers who were entitled with the benefits available under the GMO/ER of the year 2008. Further the impugned notification in clause 2 (ii) explicitly mentions its' superiority over all previous entitlement rules for Casualty Pensionary Awards to Armed forces Personnel. The government while formulating and introducing the GMO/ ER 2023 vide Notification dated 21.09.2003 bearing issued by the Ministry of Defence had mentioned no clarity in respect of introducing a new entitlement rule and rendering its superseding effect over all the previous entitlement rules.

In *AL Kalra v. Project & Equipment Corporation of India Ltd*,<sup>4</sup> case the Apex Court held that Article 14 strikes at arbitrariness in State action, whether it be of the Legislature or of the executive or of an 'authority' under Article 12 because any action that is arbitrary necessarily involves the negation of equality and if it affects any matter relating to public employment, it is also violative of Article 16. One need not confine the denial of equality to a comparative evaluation between two persons to arrive at a conclusion of discriminatory treatment. An action per se arbitrary itself denies equal protection by law.

In the case of the *State of Orissa & another v. Mamta Mohanty*, (2011) 3 SCC 436, the Court highlighted that the rule of law inhibits arbitrary action and also makes it liable to be invalidated. Every action of the State or its instrumentalities should not only be fair, legitimate, and above board but should be without any affection or aversion. It should neither be suggestive of discrimination nor even give an impression of bias, favoritism, and nepotism. Procedural fairness is an implied mandatory requirement to protect against arbitrary action where statute confers wide power coupled with wide discretion on an authority. If the procedure adopted by an authority offends the fundamental fairness or established ethos or shocks the conscience, the order stands vitiated.

GMO/ER 2023 VIOLATES THE PRINCIPLE OF SOCIAL JUSTICE

The principle of social justice is highly relevant, given that military personnel, especially those serving

in challenging environments, are a vulnerable group deserving of enhanced protection and care. The state's duty to protect these individuals aligns with the broader goals of social justice. The armed forces personnel, particularly those suffering from service-related disabilities or those who have served in high-risk, high-altitude areas, constitute a vulnerable section of society.

The doctrine of social justice mandates that the state provides special protection to such individuals through favorable policies, including pensions and disability benefits. The guidelines and rules in question introduce more stringent conditions for the grant of disability pensions and related benefits. These new regulations undermine the social justice principle by disproportionately affecting those who have served in the most difficult and hazardous conditions. By retroactively applying these guidelines, the state has unjustly deprived deserving veterans of benefits they were previously entitled to, thus violating the principles of social justice.

In *Pani Ram v. Union of India*,<sup>5</sup> the Apex Court held that, a Right to Equality guaranteed under Article 14 of the Constitution of India would also apply to a man who has no choice or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of rules as part of the contract, however unfair, unreasonable and unconscionable a clause in that contract or form or rules may be. We find that the said observations rightly apply to the facts of the present case. Can it be said that the mighty Union of India and an ordinary soldier, who having fought for the country and retired from the Regular Army, seeking re-employment in the Territorial Army, have an equal bargaining power.

GMO/ER 2023 VIOLATES THE PRINCIPLE THAT RETROSPECTIVE EFFECT SHALL NOT BE GIVEN TO LAWS/POLICIES WHICH ARE ARBITRARY IN THEIR APPLICATION

It is a well-settled law that retrospective effect cannot be given to a law or rule while interpreting a policy, rule, or law. The principle of *Lex retro non-agit* stipulates that a law doesn't apply retroactively. A law cannot make something illegal that was legal at

the time it was performed. Moreover, the principle of *Lex prospicit non-respicit* states that the law looks forward, not backward". of the various rules guiding a legislation must be interpreted, one established rule is that unless a contrary intention appears, a legislation is presumed not to be intended to have a retrospective operation. The idea behind the rule is that a current law should govern current activities.<sup>6</sup>

SUPREME COURT'S VIEWS ON RETROSPECTIVE EFFECT

The GMO / ER of the year 2023 curtails the rights of Armed forces personnel. The GMO / ER of the year 2023 in its merit, has been presented as a substantive amendment to the previously existing Entitlement Rules. In *Sree Sankaracharya University of Sanskrit and Ors v. Dr. Manu and Anr.*<sup>7</sup> observed that:

- I. If a statute is curative or merely clarificatory of the previous law, retrospective operation thereof may be permitted.
- II. In order for a subsequent order/provision/amendment to be considered as clarificatory of the previous law, the pre-amended law ought to have been vague or ambiguous. It is only when it would be impossible to reasonably interpret a provision unless an amendment is read into it, that the amendment is considered to be a clarification or a declaration of the previous law and therefore applied retrospectively.
- III. An explanation/clarification may not expand or alter the scope of the original provision.
- IV. Merely because a provision is described as a clarification/explanation, the Court is not bound by the said statement in the statute itself but must proceed to analyze the nature of the amendment and then conclude whether it is, in reality, a clarificatory or declaratory provision or whether it is a substantive amendment which is intended to change the law and which would apply prospectively.

<sup>5</sup> *Pani Ram v. Union of India*, (2021) 19 SCC 234.

<sup>6</sup> *CIT v. Vatika Township (P) Ltd.*, (2015) 1 SCC 1.

<sup>7</sup> *Sree Sankaracharya University of Sanskrit and Others v. Dr. Manu and Another*, Civil Appeal No. 3752 of 2023.



Moreover, in *Excise Commr. v. Esthappan Cherian*,<sup>8</sup> the Supreme Court held that the rule or law cannot be construed as retrospective unless it expresses a clear or manifest intention, to the contrary. Hence there is profusion of judicial authority on the proposition that a rule or law cannot be construed as retrospective unless it expresses a clear or manifest intention, to the contrary. Another equally important principle applies: in the absence of express statutory authorization, delegated legislation in the form of rules or regulations, cannot operate retrospectively.

In the case of the *Union of India and Ors. v. Tushar Ranjan*<sup>9</sup> has held that the legislatures and the competent authority under Article 309 of the Constitution of India have the power to make laws with retrospective effect. This power, however, cannot be used to justify the arbitrary, illegal, or unconstitutional acts of the executive. When a person is deprived of an accrued right vested in him under a statute or under the constitution and he successfully challenges the same in a court of law, the legislature cannot render the said right and the relief obtained nugatory by enacting retrospective legislation.

The retrospective operation of the amended rule 13 cannot be sustained. The Court was satisfied that the retrospective amendment of rule 13 of the rules takes away the vested rights of other general candidates who are senior. Therefore, it is declared that amended rule 13 to the extent it has been made operative retrospectively is unreasonable, arbitrary, and, as such violative of Articles 14 & 16 of the constitution of India. Merely because a person has attained discharge on compassionate grounds although his disability has been acquired on account of stress and strain of military service will not be a ground to reject the claim of disability pension, it is an invalidated act in terms of Appendix II of Rule 173 Pension regulation for the Army.

### CONCLUSION

By virtue of Article 33 of the Constitution of India, Army personnel are presumed to submit certain rights while taking up the service. However, the considerations apparently do not seem fair in the face of their service. Jawans should be provided holistic training on fundamental rights, human rights, and international humanitarian laws to sensitize them

more on the rights that cannot be taken away from them. Merely because someone chooses to join the Indian Army on a voluntary basis, does not mean that that person is supposed to be deprived of his fundamental rights.

Fundamental rights, being ever so sacrosanct, their abrogation is an issue that needs to be thoroughly discussed and justified before such basic rights are taken away from the members of the armed forces. When the rights are abrogated in a manner that *prima facie* appears discriminatory, it gives rise to disgruntlement amongst members of the armed forces and gives an impression as if they are being treated as second-rate citizens, rather than as brother-citizens-in-uniform.

Dr. B.R. Ambedkar stated that the Constitution be effective enough to “wipe out every tear from every eye” of the citizens of India. While, practically, it may be impossible to attain such lofty standards, the difficulty or impossibility of attaining a desirable goal should not be made to mean that no efforts at all will be made for its attainment. It is a known fact that many jawans, and even officers, endure various kinds of bullying and harassment by their superior officials.

However, such cases do not get highlighted as there is no proper mechanism to tackle them. Independent authorities should probe into such matters if they are reported by the victim of the abuse in the Indian Army. Another example where the Jawans are blindly led by their superiors is to follow the commands of seniors irrespective of them being outright violations of the human rights of civilians as well as theirs. The most fundamental requirements of an employee/officer are accommodation, hassle-free disbursement of pay and allowances, and meal.

<sup>8</sup> *Excise Commr. v. Esthappan Cherian*, (2021) 10 SCC 210.

<sup>9</sup> *Union of India and Ors. v. Tushar Ranjan* (1994) 5 SCC 450.