A. CHAPTER VII REDRESSAL SYSTEM IN THE ARMY IN INDIA

Introduction

The redressal system in the armed forces in India does not seem to be answering the requirement of time. The military redressal system is perceived to be outdated. More and more armed forces personnel are knocking at the doors of the Civil Courts. In the last three years alone, there have been more than 6300 cases of defence personnel approaching Civil Courts for justice. Delhi High Court alone has close to 2000 cases listed in various stages of hearing. Many high ranking officers have been approaching the Civil Courts for relief. The cases of Vice-Admiral Harvinder Singh, Admiral Vishnu Bhagwat, Air Vice-Marshal (retired) TS Chhatwal, Lt Gen Raj Kadian are some of the prominent ones. It is not a happy sign. It is clearly made out that the redressal system is not delivering required justice. Most of these cases relate to promotions and supersession. However, according to Lt Gen (retd) Harwant Singh, the cause for the large number of military personnel rushing to the Civil Courts is not that the justice and redressal system is unfair and partial and, consequently, has resulted in a loss of faith, but the Army itself has been dealt with in an unfair manner. The General has, amongst other things, suggested a multi-pronged strategy, including an appellate forum for the armed forces to provide remedies for redressal of grievances of the men in uniform.

What is redressal system

Redressal system in the Army is provided through complaints admissible under Section 26 and 27 of the Army Act 1950 or by way non statutory complaints. It is to seek relief from any legitimate grievance caused/occurred through the alleged wrong committed by the superior officer in the chain of command. Generally, such grievances relate to confidential reports, promotions, postings and against summary awards etc.

1-A See article titled “Setting sail on the High C” by Ranjit Bhushan appeared in the outlook dated 02 February 2004.

The dictionary meaning the word, “redressal” is ‘to remedy’ or ‘to correct the wrong done’ etc. The procedure to be followed has been outlined in the Regulations for the Army, Revised Edition, 1987. While remedy of aggrieved persons other than the officers has been laid down in Army Act Section 26, whereas, the remedy of aggrieved officers has been provided for in Section 27.

Statutory and Non-Statutory Complaints

(a) Remedy of aggrieved persons other than officers. There are two types of complaints, viz, Statutory and Non-Statutory. Provisions relating to Statutory complaints have been provided in Ss. 26 & 27 of the Army Act, 1950, whereas non-statutory complaints can be submitted under Para 364 of the Regulations for the Army, Revised Edition, 1987. Non-statutory complaint lies to the next superior officer only. Any person subject to the Army Act other than an officer who deemed himself wronged by any superior or other officer may, if not attached to a troop or company, complain to the officer under whose command or orders he is serving; and may, if attached to a troop or company, complain to the officer under whose command or orders he is serving; and may, if attached to a troop or company, complain to the officer commanding the same. When the officer complained against is the officer to whom any complaint should, under sub section (1) of Section 26, be preferred, the aggrieved person may complain to such officer’s next superior officer. Every officer receiving such complaint shall make as complete an investigation into it as may be possible for giving full redress to the complainant, or, when necessary, refer the complaint to superior authority. Every such complaint shall be preferred in such manner as may from time to time be specified by the proper authority. The Central Government may revise any decision by the Chief of the Army Staff under Sub Section (2) thereof but subject thereto, the decision of the Chief of the Army Staff shall be final.

\[^{1C}\] Para 364.

\[^{2}\] For corresponding provisions in other Acts, see the Air Force Act (S.26), the Naval Act (S.23), the NSG Act (S.13), the British Army Act (S.181).
(b) Complaint against military wrong. Before a person complains under this section, he should think carefully whether he has a right to the redress for which he is asking. The subject-matter of the complaint must relate to his treatment in a matter pertaining to the service and in his complaint he must state the redress for which he is asking relief. A person can only complain once on an issue under this section. It must also be understood that processing of a disciplinary case need not be delayed simply because the complainant has submitted a statutory complaint and decision thereupon has not been taken.

(c) Combined/common complaint. Combined complaint by several individuals together is not permissible, but should not, if well-founded, be treated as mutinous, where it is clear that the only object of those making the complaint, is to obtain redress of the matters by which they think themselves being wronged.

(d) Channel of Complaint. A complaint cannot legitimately be preferred to a superior officer except according to the manner defined in this section. The procedure and the channels through which a complaint is to be processed is given in Para 364 of the Regulations for the Army, Revised Edition, 1987. It is only where the immediate superior refuses or unnecessarily delays to either redress the grievance or forward the complaint that direct complaints can be made to the next higher authority. In such a case, the officer in question, against whom it is made, ought to be informed of such complaint made to his next superior officer.

(e) When the JCOs or Other Ranks may complain to Central Government. The persons to whom this section applies have no right, generally, to complain to the Central Government in the first instance on matters arising out of their military service. However, where a JCO or an Other Rank is not satisfied with the decision of the COAS, he may complain to the Central Government.
(f) **Authority competent to pass final orders.** The authority competent to dispose of the matter finally is the officer who, in pursuance of Regulations or the customs of service, is authorized to dispose of the matter. As a rule, he is the next superior officer to the officer against whom the complaint is made. If, however, a person thinks himself wronged by his officer commanding in respect of his complaint not being redressed, it has been held that he may complain to the Brigade Commander.

(g) **Petition against finding(s) or sentence or both of the court-martial.** A petition from a person who considers himself aggrieved by the finding or sentence of a court-martial does not fall within the scope of this section. Such petitions must be dealt with under the provisions of Section (26 or 27) 164 of the Army Act read with Para 365 of the Regulations, Revised Edition, 1987. However, a complaint submitted against a summary award under Army Act Sections 80, 83, 84 or 85 would be under this section.

(h) **False accusations.** A false accusation or false statement made in the complaint under this section is punishable under Army Act Section 56, but the mere fact that the complaint appears to be baseless, or even frivolous, does not render the complainant liable to disciplinary action.

(i) **Remedy of aggrieved officers.** Any officer who deemed himself wronged by his commanding officer or any superior officer and who, on due application made to his commanding officer does not receive the redress to which he considers himself entitled, may complain to the Central Government in such manner as may from time to time be specified by the Central Government.

(j) **Channel of complaint.** The channel of processing the complaints is the same as in the case of JCOs and Other Ranks.

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3 For corresponding provisions in other Acts, see the Air Force LAct (S.27), The Navy Act (S. 23), the NSG Act (S.14) and British Army Act (S. 180). See also RA Para 364 for the procedure to be followed in processing such complaints.
(k) **Complaint against military wrong.** Before an officer submits complaint under this Section (S.27), he should think carefully whether he has a right to the redress sought. For instance, officers have no right to be promoted to Lieutenant Colonel as such; the right which they have is that their cases should be fairly considered in conjunction with those who are similarly circumstanced. They should not, therefore, complain under this section, if they are not selected, unless they have some evidence that the officers who considered their cases were influenced by ulterior motives. Similar considerations would apply to a complaint where an officer is not given a posting on compassionate grounds. Examples of complaints which officers might properly submit under this section, if they consider themselves aggrieved, are:-

(a) of an adverse confidential report;

(b) of an award made by an authority under Army Act Section 83 or 84.

(c) of an order to pay compensation on account of damage resulted to the government property under Army Act Section 90.

(l) **Actions by intermediate authority.** The intermediate authority may satisfy his mind to the facts of the case. He may investigate the matter and call for documents/informations connected with the issue(s) involved. He may give relief in whole or in part informing all authorities in the chain of command. Where he does not give any relief, he has to forward such complaint to the next superior authority with his recommendations thereon as to the disposal of the case.

(m) **Whether speaking order necessary.** This section does not make it mandatory for the Central Government to pass a speaking order while disposing of the complaint. The High Court of Madras has, however, held that statutory complaint must be disposed of by a speaking order. It is
held that the Army Head Quarters should not return the second complaint stating that it did not contain any fresh material. In fact, the Army Head Quarters is only a channel and is duty bound to forward the same for consideration of the Central Government.4

The intermediary authorities viz Army Head Quarters etc cannot withhold a statutory complaint and return it to the complaint unactioned. He will have to forward the same to the appropriate authority, as the case may be.5 The Central Government has to ensure that the orders given under Section 27 must be speaking orders.

(n) Processing of Complaints through Complaints and Advisory Board (CAB). There has been a rise in the number of complaints over the years, except a temporary dip in 1998-99 notwithstanding. Most of these complaints relate to ‘supersession’. One of the main reasons for this phenomenon is the high aspiration levels due to the changing socio-economic values in the society. To understand the volume of such complaints and the percentage of relief granted etc, it would be appropriate to see the data given below :-

![Civil Courts, including Supreme Court](decision in favour or against the government)

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<th>Years</th>
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<tr>
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<td>685</td>
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### Statutory complaints – rank wise

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### Summary of redress given by COAS/Min of Defence

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A widespread feeling had prevailed in the environment that the Branches concerned at the Army HQ and the Directorates of various Corps, who are policy making and personnel management agencies tended to be supporting of their own dispensation and interpretation of the rules, to the detriment of the complainants. This kind of feelings leads to erosion of the credibility of the redressal system in the Army. Hence, it was felt to have a body to monitor, analyse and comments on all complaints, whether statutory or otherwise. Accordingly, a Complaints and Advisory Board (CAB) was established, which functions directly under the COAS to help him in decision – making. The mandate designed for the CAB is quite laudable. It is to ensure that the case is given a thorough judicious scrutiny and in conformity with the merits of the case, to ensure that no miscarriage of justice takes place. Whether or not this body (CAB) is capable of discharging its function of analysis and evaluation of the merits of the case is a big question? The answer seems to be in the negative. Let’s understand it how it functions.

It is a body of officers consisting of Additional Director General (ADG), (CAB) and directors (CAB). While ADG is of the rank of Major General, whereas the directors are of the rank of Colonel. These officers have been pooled in from various walks of life having, otherwise, no experience of legal work as such. It has been experienced that where there are mixed set of facts involving both law and facts, they are not equipped to deal with those matter properly. Rightly so, they have no knowledge of law, much less the interpretation and construction of statutes. To that extent, it may be stated that the consideration on the complaints at the level of the Army Head Quarters by the COAS may not be said to be proper. Some cases dealt with in the past bear testimony to the aforesaid view.

It was held by the Madhya Pradesh High Court in the case of Sunil Bawa Lt Col (TS) Vs Union of India that injustice had been done to the petitioner by not disposing of his statutory complaint by passing a speaking

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\[1994(8) SLR 253 (MP)\]
order. As per them, reasoned decision is not only for the purpose of showing that the citizen is receiving justice but also it is matter of valid discipline in any quasi-judicial order. This aspect of the matter is of little more than ordinary importance in the Army whose satisfaction, as contrasted with frustration, is directly connected with the security of the country. The court further observed that objectivity and not subjectivity is an important part of this constitutional culture. The petitioner is as much entitled to the protection of 'rule of law' as any other person in this country. A perusal of the order of the Central Government reveals that the grievances of the petitioner stated in the statutory complaint have not received due consideration.

However, in another case, the High Court was of the view that the Central Government had given sufficient reasoned order while disposing of the complaint. Hence, no apparent prejudice seems to have been resulted to the petitioner.

(o) Delay in giving redress. It has been felt that there is a prolonged delay that occurs while deciding the merits of a statutory complaint. Even, in a simple and straight-forward matter, where apparent 'bias' is made out, anything between one year to an year and a half is taken. The delay resulted needs to be cut short in two ways, firstly, the complaint need not be routed through so many channels, right from the unit level to the Central Government/COAS, as the case may be. I think, it would be sufficient if on receiving the desired input at the level of the Commanding Officer, may be extendable to the Brigade Commander level, the complaint should be sent directly to Army Head Quarters. The experience indicates that there is hardly any additional input supplied at the Division, Corps or Command level. Secondly, the organisation at the CAB needs to be revamped, incorporating an officer or two of the level of Brigadier/Colonel from the Judge Advocate General's Department. Not only these measures would cut short delays but also help would in correctly appreciating the merits of the case, especially those which have mixed questions of facts and law.

Sharma VD, Lt Col V Union of India, Lucknow High Court WP No 13401 of 1985.
Promotion. A large number of complaints are filed against supersession and adverse CR. In the case of Rajinder Singh Sehrawat Vs Union of India, the Delhi High Court observed in relation to judicial review of adverse CR. The court was of the view that the court cannot moderate the appraisal and grading given to an officer. They felt that while exercising judicial review of such a matter, the court should not venture into assessing grading of an officer. But if the adverse entries are vitiated by extraneous considerations, the court must interfere and quash them. In the instant case, they found that there were specific allegations of ‘bias’ against respondent No 3 & 4 in the petition, however, no affidavit was filed to deny such allegations. Hence, allegations of bias and malice deemed to have been admitted and accordingly factum of malice was established.

Shri GS Tiwari in his article on “Right to Promotion: Its Legal Implications” with regard to ‘management function’ of the organisation dealing with the CR and promotions has, inter alia, written that the Supreme Court had held in Workmen of Williamson Magor & Co V William Magor & Co that although promotion is a managerial function, yet it must not rest entirely on the subjective satisfaction of the management which must be based on some objective criteria. Opportunity for promotion increases efficiency of the public service, while stagnation reduces efficiency and makes the service ineffective. In CSIR V KGS Bhatt, it has been held that an organisation that fails to develop a satisfactory system of promotion is bound to pay a severe penalty in terms of administrative costs, low morale and ineffective performance, and there cannot be any modern management, much less career planning, man-power development, management development, which is not related to a system of promotion. Thus, promotion becomes a matter of public policy and public law. A modern state is more of a welfare state engaged in numerous unconventional activities impugning on the interests and rights of the people. Therefore, it
is in public interest that such organisations are efficient, which will only be possible if employees are committed, involved and motivated. The constitutional guarantee of equality of opportunity in the matter of public employment enshrined in Article 16(1) is applicable not only to initial employment, but also to promotion. Hence, no discrimination is possible on ground of religion, race, caste, sex, descent, place of both or residence as provided under Article 16(2) except as permissible under Article 16(3).

As per the author, the courts have not been able to evolve clear guidelines to test the assessment of merit, ability and suitability on the touchstone of law. Another area is the question of promotion policy or criteria for promotion, which has been left to the administrative discretion. However, the courts have spelt out the necessity of laying down clear and well-defined guidelines for promotion policy, because vague and uncertain policy would be antithetical to the Rule of law. (K Koteswara Rao Vs Director General ICMR- 1990 (2) SCR 148). It has been held in this case that an employee has a right to insist that promotion made in accordance with definite rules or guidelines and that it should not be fanciful or arbitrary. The legal position is that there is no fundamental right to promotion but an employee has only right to be considered for promotion, when it arises in accordance with the relevant rules. Thus, we find that the judicial intervention is limited only to arbitrariness and discrimination. The vast areas of promotion policy and wisdom of selection committees have not yet been touched. It may be worthwhile to expect the unexplored area may not remain for so long and the legality of administrative action in these areas might also be subjected to judicial scrutiny.

In matters concerning 'promotions' and career, there may be a need to have a statutory board to look into the grievances of the persons subject to the Army Act. It is ridiculous to note that an officer doing exceedingly well in service for a number of years in the Army, suddenly finds himself as 'worthless' in one of his confidential reports, on account of which he gets superseded. Normally, one odd confidential report (CR) should not come in one's way provided his profile, otherwise, is spotless. It is such CRs which need to be considered with a microscopic view. After all, small little
‘prejudices’ or ‘bias’ on the part of one odd solitary authority in the chain of command should not be allowed to ruin the career of an officer, which is otherwise ‘above average’. There needs to be some mechanism available under which an opportunity should be given to the aggrieved person to air his views on the subject personally or through his counsel. After all, a person must feel satisfied that a justice has been done in his case. Removal of frustration from soldier’s mind would not only be helpful to him alone but to the service as a whole.

B. REDRESSAL SYSTEM UNDER THE BRITISH MILITARY LAW

Complaints by Officers. Under the British law, if an officer thinks himself wronged in any matter by a superior officer or authority and on application to his commanding officer does not obtain the redress to which he thinks he is entitled, he may make a complaint with respect to that matter to the Defence Council. Whilst under this Section an officer complaint lies to the Defence Council, in practice, the complaint will be considered by the Army Board of the Defence Council. The functions of the Defence Council may be discharged by the Army Board and the decision of the Army Board will have the same effect as if it had been made by the Defence Council. Before an officer complains to the Army Board, he must not only think himself wronged by a superior officer or authority but think himself entitled to some redress which he has not received on application to his CO. The subject-matter of his complaint must, therefore, relate to his treatment as an officer by his superiors in a matter pertaining to the service and in his complaint, he must state the redress for which he is asking. It is useless for him to complain generally of unfair treatment without asking for a specific remedy. Before an officer submits a complaint, he should think carefully whether he has a right to the redress he is asking. For example, an officer holding a short service commission has no right to be granted a regular commission. Similarly, a ‘Major’ has no right to be promoted to the rank of Lieutenant Colonel. The right which they have is that their cases should be fairly considered in conjunction of those of other candidates, who are similarly circumstanced.

11 Army Act 1955, S.180(1).
A complaint against the finding and sentence cannot be made under this section as the Act provides a specific remedy by petition under S.108.

Queen's Regulations (1975) 5.511(d) (6) deals with the rights of an officer to make representation not amounting to a complaint in connection with a confidential report which has been made upon him.

In an officer making a complaint were to make an attack on the character of another officer or of a soldier which he knew to be false, or if in making such a complaint he were to willfully to suppress a material fact, his conduct might be made the subject of a charge under S.69.

On receiving such complaint, it shall be the duty of the Defence Council to investigate the complaint and to grant any redress which appears to him to be necessary, or if the complainant so requires, the Defence Council through the Secretary of State make their report on the complaint to Her Majesty in order to receive the directions of Her Majesty thereon. An officer may complain to the Sovereign on any matter on which he has the right to complain to the Defence Council, but he should not press for the matter to be referred to Her Majesty, if he has received the redress which he requires at a lower level.

 Complaints by Warrant Officers, Non-Commissioned Officers and soldiers

If a Warrant Officer, non-commissioned officer or a soldier thinks himself wronged in any matter by any officer other than his commanding officer or by any Warrant Officer, non-commissioned officer or soldier, he may make a complaint with respect to that matter to his commanding officer.

If a Warrant Officer, non-commissioned officer or soldier thinks himself wronged in any matter by his commanding officer, either by reason
of redress not being given to his satisfaction on a complaint under the above sub para (S.181(1)) or for any other reason, he may, in accordance with the procedure laid down in Queen’s Regulations,\textsuperscript{12} make a complaint with respect thereto to the Defence Council.

It shall be the duty of the commanding officer or, as the case may be, the Defence Council to have any complaint received by him or them, investigated and to take any steps for redressing the matter complained of which appear to him or them to be necessary.

We see that the system of redressal of grievances, whether of an officer or others is very similar to our own. These provisions, however, are not attracted if the matter of complaint relates to promotions etc.

\textbf{C. REDRESSAL SYSTEM IN THE UNITED STATES}

\textbf{Introduction}

In the United States, the phrase “due process of law” is attracted to, generally, any facet of one’s life, be it concerning life, liberty, property etc. The term due process of law” is found in the fifth amendment to the United States’ constitution, which states “no person shall \textit{------} be deprived of life, liberty, or property, without due process of law\textit{------“}. It may be also be made applicable to the conditions of service such as promotion, transfer etc. So, anybody feeling aggrieved will have a cause of action, for which he can always complain to his superior officer for redressal.

Arguably, no officer has a right to a promotion. While probably a valid statement, such an argument misses the point insofar as due process principles are concerned, for each officer has a right to be considered for permanent promotion upon completion of a specified number of years of service. It goes without saying that when an officer is considered for promotion, whether such consideration is mandatory or discretionary, the

\textsuperscript{12} Queen’s Regulations 661 & 661A.
proceedings must be held within the scope of statutorily granted authority,\(^\text{13}\) and must not be held in a manner which contravenes statutory requirements.\(^\text{14}\) Furthermore, the Army Regulations set forth procedures which govern the promotion process in a general fashion. As long as these regulations are in effect, the Army cannot ignore them to the detriment of an individual, without committing an arbitrary and unlawful act.

An officer’s expectations and understanding that a selection board will follow the law and the Army’s regulations confer property right upon him which are entitled to due process protections. In Board of Regents of \textit{State Colleges at al Vs Roth},\(^\text{15}\) the Supreme Court gave a following view of property which is protected by the due process clause: -

"To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it."

Certain results of selection board proceedings can be termed as deprivations of an officer’s liberty. There can be little doubt that the officer who is passed over is stigmatized as a result of that action. To many, this may signify a character or moral defect; to other, it may be a reflection on competency. In either case, the officer has been stigmatized, and the Supreme Court has ruled that where “a person’s good name, reputation, honour or integrity is at stake because of what the government is doing to him due process protections “are essential”. Due process has been described as a summarized constitutional guarantee of respect for those personal immunities which are so rooted in their national traditions and conscience as to be considered fundamental, or are implicit in the concept of ordered liberty.\(^\text{16}\)

\(^{15}\) 408 U.S. 564 (1972).
There appear to be four fixed principles of administrative due process: (1) an agency must act within the limits of its statutory authority;\(^{17}\) (2) the agency must follow its own regulations;\(^{18}\) (3) the agency must not act in an arbitrary, capricious or unreasonable manner;\(^{19}\) and (4) individuals affected by the agency action must be given some kind of notice concerning the action and afforded some opportunity to be heard .\(^{20}\) The Supreme Court has held that when the government intends to take an action which will have direct adverse impact on an individual, ‘due process’ requires that the individual receives notice of the action against him and be afforded an opportunity to be heard in a meaningful way.\(^{21}\)

**Relief from improper Board’s decision’s action: Standby Advisory Boards.** Although the regulations governing active duty and reserve promotions state that action of the selection board is administratively final, both regulations provide for the convening of standby boards if a material error was present in the records of an officer when reviewed by a selection board. Standby selection boards will not be convened as a matter of course, but will only be convened upon as a matter of course, but will only be convened upon a meritorious request for review of an officer records. Such a request is possible from several sources but will usually originate from one of three sources; the individual concerned; the individual’s commander; or officer’s branch. If the request review discloses a material error or the erroneous omission of an officer’s name from the consideration list, the stand-by board will be convened. In the event of the stand-by board assembling to review the case, the board will be given the corrected record of the whole record is to be evaluated, and the records of several other officers who were considered by the original board, some of whom were recommended for promotion and others who were not. The stand-by board will evaluate and score all the files presented. If the reconsidered officer’s score is high enough to place him in the group recommended for promotion, he also will be recommended.

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\(^{19}\) Weirs V United States, 408 F.2d (1969).
The Army board for correction of military records. It is also possible that an officer who feels he has been wronged by a selection board has also failed to obtain relief from a standby board. In such a situation, the officer has a potential source of relief in the Army Board for Correction of Military Records (ABCMR). The ABCMR, implements a provision of title 10 of the United States Code, which authorizes the Secretary, acting through a board of civilians in the executive part of the Department of the Army to change any military record of the Army when he considers it necessary to correct any error or remove an injustice. The statute also requires that any correction for a correction of record must be made within three years after the claimant discovers the error or injustice. However, this time-limit may be waived by the ABCMR if it determines such action to be in the interest of justice. The regulation provides that no application will be considered by the ABCMR until the applicant has exhausted all effective administrative remedies available to him.

In each case in which the ABCMR determines that a hearing is warranted, it will so notify the applicant informing him of his right of personal appearance, right to counsel and where and when the hearing will be heard. The applicant may present witnesses on his own behalf. In preparing his case, the applicant will be assured access to all official records that are necessary for an adequate presentation of his case, consistent with the regulations governing privileged or classified material. If a particular information is classified, the ABCMR must take steps to determine whether declassification is possible. If it is not, a summary of the contents of such classified material must be made available as to allow to prepare a response.

The hearing will be conducted by the Chairman of the ABCMR in such a manner as to ensure a full and fair hearing. The rules of evidence are not applicable to the hearing, but all testimony before the ABCMR and the entire proceedings are to be recorded verbatim. Under certain circumstances, the ABCMR has the delegated authority to take final action on behalf of the Secretary to promote retrospectively applicants who would have been
promoted during regular promotion cycles but were inadvertently or improperly excluded from consideration during such cycles.

The statute has been interpreted to confer broad powers upon the ABCMR. For instance, the Board may correct retirement dates or a record of trial by court-martial, promote officers in the Reserves and change a discharge or dismissal adjudged by a general court-martial.22

The court did indicate the possibility of judicial intervention in the promotion process, as under:-

"Selection Boards have and must have wide discretion in performing their duties. We do not think the court are or should be in the "promotion business'. But the selection procedure must follow the law. The documents which are sent to the selection board for its consideration, therefore, must be substantially complete, and must fairly portray the officer's record. If a service secretary places before the board an alleged officer's record filled with prejudicial information and omits documents equally pertinent which might have mitigated the adverse impact of the prejudicial information then the record is not complete, and it is before the selection board in a way other than as the statue prescribes.23

Judicial Review. If an officer does not receive satisfaction from the ABCMR to receive justice to which he feels entitled, he may resort to the federal courts.24 However, the field of military promotions is an area into which courts rarely tread, for as the Supreme Court explain in Orlaff Vs Willoughby:25

"We know that from top to bottom of the Army, the complaint is often made, and sometimes, with justification, that there is no
discrimination, favouritism or other objectionable handling of men. But judges are not given the task of running the army. The responsibility for setting channels through which such grievances can be considered and fairly settled rests upon the Congress and upon President of the United States and his subordinates. The military constitutes a specialised community governed by a separate discipline from that of the civilian. Orderly government requires that judiciary be as scrupulous not to interfere with legitimate army matters as the army must be scrupulous not to intervene in judicial matters. While the courts have found occasion to determine whether one has been lawfully inducted and is therefore within the jurisdiction of the Army and subject to its orders, we have found no case where this court has assumed to revise duty orders as to one lawfully in the service". "--------- concern has also been voiced that the courts would be inundated with servicemen complaints should the doors of reviewability be opened. But the greatest reluctance to accord judicial review has stemmed from the proper concern that such review might stultify the military in the performance of its vital mission. On the other hand, the courts have not entirely refrained from granting review and sometimes subsequent relief.26

Thus, we observe that in the American system, anybody feeling aggrieved though an administrative action, may seek relief. The system providing relief to such personnel is so effective and enviable that it inspires confidence in one's mind as to the sincerity of purpose on the part of the United States. Needless to say, such mechanism does not only meet the requirement of justice, equity and fairplay but also helps the system to generate the feelings of good to enable its men in uniform to discharge their duties with full dedication and responsibility.

26 Mindes v Seaman, 453 F. 2d 197, 199 (5 Cir. 1971); see also "Officers Selection Boards and Due Process in United States" by John N Ford, published in Military Law review, Vol 70, 1985.
D. REDRESSAL SYSTEM IN SOME OTHER COUNTRIES

(i) RUSSIA.

All servicemen have a right to make complaints about illegal actions or orders of commanders with respect to them, about violations of rights and benefits established by service, or non issuance of their authorized allowances. A complaint shall be made directly to the commander of the person against whose action the complaint is made, and if the person making the complaint does not know through whose fault his rights have been violated, then the complaint shall be made through normal channels. It shall be forbidden to complain of the severity of a disciplinary penalty if the commander has not exceeded the disciplinary authority assigned to him.

If a serviceman discovers anywhere misappropriation or damage to military property, illegal expenditure of funds, or other obvious abuses in the supplying of troops, he is obliged to report this through normal official channels and may send a written report to a superior commander.

If the commander receiving a complaint or report does not have sufficient authority to satisfy the request of the person making the complaint, he shall immediately forward the complaint up the chain of command. Servicemen who discover an abuse or any kind of serious inadequacy and who through their reports make possible its elimination shall be eligible for a reward. In case a serviceman makes a false complaint, he is liable to be proceeded against for that. A commander who permits an obvious injustice or an illegal action with regard to a subordinate on account of a complaint or petition, shall be subject to strict responsibility.

Each unit is supposed to be maintaining a complaint book and this book is supposed to be inspected by the visiting senior commander every month.
(ii) CANADA

Except in respect of matter that would properly be the subject of an appeal or petition under Part IX of the National Defence Act of Canada, an officer or a man who considers that he has suffered any personal oppression, injustice or other ill-treatment or that he has any other cause for grievance, may as a matter of right seek redress from such superior authorities in such manner and under such conditions as shall be prescribed in the regulations made by the Governor in Council.  

(iii) CHINA

In China, it is a different system altogether which is being followed for redressal of complaints by its personnel. The Chinese military law (dated 26 March 1915, as amended) provides that, “Complaint for redress by a military officer or a military service-man shall also be brought before a military court-martial.” But the Military Court-Martial shall only be organized by order and approval of the Ministry of War or the highest authority concerned.

Conclusion

Thus, we notice that different countries have adopted different procedures to redress the grievances of its personnel. British and Canadian military judicial systems are very akin to ours. So far as our system is concerned, we do not have a satisfactory mechanism to ensure that justice is seen to be done to the complainant. To illustrate this point, it may be mentioned that we do not have an effective procedure such as ‘Due Process Clause’ in the American military judicial system introduced through the Fifth Amendment to their constitution, which has solved many problems. Such a Clause is not only applicable to the more important issues such as deprivation of life, liberty or property but also to smaller issues like conditions of service such as promotion, transfer as well. It is heartening to note that there is so much of transparency visible that a

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27 NDA, S.29; RSC, 184, S.30.
person can have access to his record of service and gradings in the confidential reports and their rectification through the medium of Stand-by Advisory Boards, Army Board for Correction of military records and finally the judicial review. A full hearing is given before the latter two forums where one can put across one’s case not only personally but through his counsel as well. These bodies have wide power to redress the grievances of service personnel in the U.S.A.

It is obvious that a person not receiving a just relief for his grievance cannot be expected to discharge his duty efficiently. It is hoped that we too have a similar system in place as the Americans have so as to address the multifarious problems that our men in uniform have.