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Respected Raksha Mantri

07 August 2019

SUB: Issues arising out of the CBDT circular on withdrawal of Income Tax exemption on Disability Pension

I write regarding the recent CBDT circular dated 24 June 2019 on withdrawal of exemption of Income Tax on Disability Pension of soldiers who continue to serve.

The matter has been a cause of concern for the serving as well as veteran soldiers who have been disabled in the line of duty – especially the demonizing and discrediting of disabilities in soldiers.

As you may recall, on 08 July 2019 I asked you a Parliamentary Question regarding the circular to which you assured that you would look into the matter and that the benefits already been granted by the Government will not be taken back. Following this, I took the initiative of creating an open round table with veterans and others, including a senior media security and defence analyst.

The discussion in the round table brought out some important points and as a result of this I am making these observations and recommendations for your consideration and urgent implementation.

The Nation has just observed the 20th anniversary of the Kargil Vijay Diwas. About 1,400 of our soldiers were injured in the conflict and many among them suffered loss of limb and other disabilities.



We have honoured these braves for the service, valour and sacrifice and therefore it is all the more important that we now assure them, and all others similarly disabled in the line of duty of the Government's support in matters that affect their disability pensions and benefits.

Your assurance and interest to find a resolution to the matter has been welcomed by men and women in uniform and veterans alike and I urge you to take necessary steps to resolve this matter.

Sincerely,

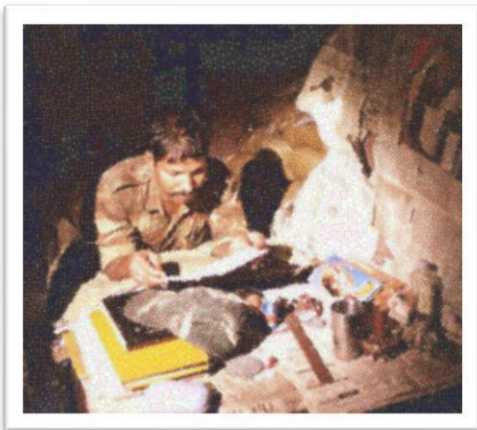
RAJEEV CHANDRASEKHAR

Shri Rajnath Singh

Hon'ble Minister of Defence
Government of India
New Delhi

Enclosed:

Recommendations of the Round Table on the issue of disability pension



RECOMMENDATIONS OF THE ROUND TABLE ON THE ISSUE OF DISABILITY PENSION

RAJEEV CHANDRASEKHAR, MEMBER OF PARLIAMENT
JULY 2019

RECOMMENDATIONS OF THE ROUND TABLE ON THE ISSUE OF DISABILITY PENSION

A. BACKGROUND SUMMARY

The CBDT issued a Circular No 13/2019 dated 24 June 2019 stating that Income Tax Exemption on disability pension would only be allowed to those disabled personnel who are invalided from military service and not to those who are released on completion of tenure or superannuation.

The circular itself comes despite earlier clarifications given by the CBDT on queries raised by the IT authorities on the same matter of exemption of Income Tax on pensions. The CBDT vide: (a) Instruction No 136 (F. No. 34/3/68-IT(AI) dated 14 January 1970; and (b) Instruction No 2/2001 (F.No. 200/51/00-IT (A1) dated 02 July 2001 had clarified that the entire disability pension comprising of disability element and service element was exempt from tax and which was being followed scrupulously without any problem until this new interpretation has been put into motion by the Circular dated 24 June 2019.

However, there seems to be infirmity in the CBDT Circular dated 24 July 2019 in that it overlooks the earlier clarifications and misinterprets the term “invalided” and has given the entire matter a different meaning than what was being interpreted by the authorities till date.



1. USE OF TERM “INVALIDED” IN CBDT CIRCULAR:

The term ‘invalided’ has been taken by the CBDT to mean those who are medically boarded out prematurely from military service before their actual retirement, discharge or superannuation.

Whereas, in military parlance, the term invalid or invalided simply refers to a person who became an Invalid (disabled) while in military service. It has no connection with “invaliding ‘out’ prematurely from military service”. A person who was disabled while in military service was termed as an Invalid and when such a person was discharged, whether prematurely or on completion of his terms, he was discharged through a medical board and termed “invalided from” service (and not invalided ‘out’ of service).

2. EXEMPTION OF INCOME TAX, 1922:

Income Tax was exempted in the year 1922 for invalid soldiers and the same terminology as above was used in the applicable military instructions as well as the exemption granted by the Finance Department.

3. CONFUSION CREATED IN THE YEAR 1940 AND CORRECTIVE ACTION BY GOVERNMENT OF INDIA TO CLEAR THE CONFUSION:

A problem of interpretation in the term ‘invalided’ also came to fore in the year 1940 when Pension Regulations were issued and used the term confusingly. However, this was resolved by the Government of India once and for all in the year 1950 when the Entitlement Rules, 1950, were promulgated and it was specifically underlined and provided that the term ‘invalidation’ for the purposes of disability pension shall mean all military personnel who at the time of release from service are in a medical category lower than the one in which they were recruited. These Rules of 1950 were officially appended with the existing Pension Regulations by the order of the Central Government. This was further provided in Ministry of Defence Letter No A/22255/AG/PS4 (d)/2725/Pen-C dated 05 November

1969. The same was once again reiterated later in the form of Rule 4 of Entitlement Rules, 1982.

4. LITIGATION:

The discrimination between disability benefits between those who are prematurely medically boarded out and those who opt to continue to serve the nation despite the disability has been a subject of many a litigation.

Some such examples are Civil Writ 2967/1989 Mahavir Singh Narwal Vs Union of India as affirmed by the Supreme Court in SLP 24171/2004 disposed on 04 Jan 2008 wherein the Delhi High Court explained and interpretation the term 'invalidation' and further, the decisions of the Supreme Court in Civil Appeal 418/2012 in Union of India Vs Ram Avtar and of course in Civil Appeal 5591/2006 KJS Buttar Vs Union of India.

The term "invalidation" is hence adequately defined by the Rules of the Government and interpreted by Constitutional Courts.

The CBDT, it seems, has however restrictively interpreted the term as per its confused definition as it existed between 1940 (When Pension Regulations, 1940 were promulgated) and 1950 (When Entitlement Rules, 1950 were put into force to clarify the term 'invalidation').

Above all, it must be understood that tax exemption on disability pension is not a benefit or incentive but rather an acknowledgement of the continued suffering of the military personnel in performing their duty to the Nation.

B. OTHER ISSUES ARISING OUT OF THE CBDT CIRCULAR

While the CBDT circular deals with the withdrawal of exemption of IT on disability pension, its justification by the office of the Finance Minister by putting out an undated and unsigned note from the Army Headquarter in the public domain has led much debate and is a cause of concern.

Soldiers with disabilities have been denigrated and this has led to a negative public perception of the braves in uniform who have lost limbs, abilities or have ended up with so-called 'lifestyle diseases' as a result of intensely physically and mentally stressful service conditions.

1. ARMY HEADQUARTER NOTE:

The undated and unsigned note by the Army Headquarter states that "the broad banding and higher compensation awarded for disability with tax exemption has over the years led to rise in personnel seeking disability, even for lifestyle diseases."

The statement is questionable since the incidence of disability is first endorsed by an Initial Medical Board, then by re-categorization medical boards and then finally by the Release Medical Board at the time of retirement. There are hence multiple doctors, all different and at varied locations in the country, who endorse the existence of a medical condition and its percentage. There hence cannot be a case of a 'fake' or 'feigned' disability as is being portrayed.

However, it must also be considered that as far as Generals cornering disability claims is concerned, the incidence of a disability incurred in-service is bound to be higher in senior ranks simply because they retire in their late 50s (up to the age of 60) while soldiers start retiring in their 30s.

There is also a sudden negative focus on the so called "lifestyle diseases" with an intention to vilify disabled soldiers suffering from disabilities such as heart disease, hypertension, depression, neurosis, psychosis etc. It is important to point out here that not only are such disabilities affected by stress and strain of service; but also

that they are eligible for disability benefits under pensionary rules for military as well as other uniformed personnel and as also held by Constitutional Courts.

2. DEMONIZATION OF MILITARY DISABILITIES:

What we also see today is unnecessary demonization of military disabilities. The incidence of aggravation of disabilities in military personnel is much higher than civilian employees simply due to the reason that their service conditions are far tougher and harsher. Frequent movements and unsettled life (which ironically continues even in peace family stations due to an extreme shortage of family accommodation), postings in forward/field areas for long durations, regimented lifestyle and barrack life away from family, inability to cater to domestic commitments applicability of a disciplinary code 24X7, exposure to stressful situations including operational areas etc.



C. PROPOSED RECOMMENDATIONS GOING FORWARD

1. CHAIN OF COMMAND ISSUE AND MEDICAL BOARDS WITH REFERENCE TO THE CLAIM OF “MISUSE” IN SENIOR RANKS:

There are three types of disability cases.

- I. **Battle Casualties:** The authority for attribution of service is the situation report initiated by the formation HQ. Subsequent percentage of disability is decided by Release Medical Board (RMB) which is usually done by a hospital with Specialist Doctors available.
- II. **Accident cases:** The authority for the attribution to service is the Court of Inquiry (C of I) conducted to investigate any severe injury. The C of I is approved one level higher. The system in vogue is perfectly fine however in order to make the system more independent and dispel any doubts, for officers serving in a Command HQ, the Release Medical Board should be convened at the Command Hospital of a different Command.
- III. **Other Diseases:** Detailed recommendations on this aspect have already been made in Paragraph 2.2.1 by the Committee of Experts constituted by the Raksha Mantri in 2015. To offset any doubts in case of senior ranks, the Committee had recommended in Recommendation (e) under Paragraph 2.2.1 that boards must be very careful in examining personnel who have reported with a disability just prior to retirement.

All officers in Low Medical Category should have their Release Medical Board at a Command Hospital for certification of the percentage of disability and all officers posted in a Command HQ and officers of the rank of Maj Gen and above must be made amenable to an RMB at a Command Hospital outside the Command where they are serving. By the above method no officer claiming disability will have his RMB by a hospital within channel of command.

2. NEW APPROACH TO DEPLOYING LOW MEDICAL CATEGORY AND SOLDIERS WITH DISABILITIES

Soldiers with disabilities of any kind can be redeployed to non-combatant roles, by transferring them to areas like ordnance factories, Base workshops, petroleum depots etc and ensure bayonet strength of active units is maintained. This is also the mandate of the new law, namely, Rights of Persons with Disabilities Act, 2016.

A successful example of this is the Sri Lankan Armed Forces and a novel rehabilitation project of the Army, where disabled soldiers work in a factory that produces uniforms gives them gainful employment as well as saving money for the Army. Battalions have been formed for those disabled and after due aptitude tests, converted their skills to vehicle repair and overhauling, making uniforms, repairing electronic equipment etc



[Images by Col H N Handa, Patron & Chairman Disabled War Veterans India taken from his visit to the facility in Sri Lanka]

3. MEASURES TO REDUCE FACTORS THAT LEAD TO LOW MEDICAL CATERORY:

- I. Reduce operational deployment from three years to a shorter tenure of six months or one year.
- II. Ensure proper diet – low fat, high protein, to reduce development of certain diet related health conditions.
- III. Provide ready access to psychological counsellors to soldiers serving in highly sensitive areas.
- IV. Rationalize and Harmonize policies to ensure that nobody hides a disability in order to protect career progression. Make the policies modern albeit in tune with the requirements of the military so that the career prospects of such personnel remain protected to the greatest possible extent.



4. LEVELLING THE PLAYFIELD FOR ARMED FORCES VIS A VIS CIVILIANS AND CAPFs ON THE ISSUE OF LMC/DISABLED

Important fact: There is non-availability of protection of service or pension to disabled defence combatants

It is also a matter of great concern that disabled combatants of the defence services are released on medical grounds without pension in case their service is less than ten years. The service of civilian employees is protected under the Sec 20 of Rights of Persons with Disabilities Act, 2016, and further the pension of troopers of Central Armed Police Forces (CAPFs) is now protected as per the provisions of Department of Pensioners & Pensioners Welfare Letter No 21/1/2016-P&PW(F) dated 12 February 2019 which provides for Invalid Pension for non-service related disabilities irrespective of length of service by abrogating the 10 years' requirement.

The combatants of the defence services are neither being given protection of service like civilian employees, nor the protection of pension like CAPFs, which results in sharp discrimination. It is also understood that the Army continues to issue discharge orders for such disabled soldiers and is releasing many of them without any pension. An immediate course correction is required in the matter and the policy as applicable to CAPFs needs to be extended to the defence services, and till that happens, all medical discharges need to be kept on hold otherwise such soldiers and their families would be left to lead a life bereft of basic dignity and support.

D. DISABILITY BENEFITS IN OTHER DEMOCRACIES

1. UNITED STATES OF AMERICA:

- I. An apt example would be the US which also has an operationally committed military and the pension rules are pretty much similar to ours and numerically the active duty personnel are roughly the same.
- II. As per the official data maintained by the Government, the incidence of disability in the military has gone up in the US by 117% from 1990 to 2018. Also, a total of 4.75 million veterans in the US are in receipt of disability benefits. India, the number of disability pensioners is estimated to be less than 0.2 million.
- III. The disability pension and compensation in the US is exempted from Tax as provided by Publication 525 of the Internal Revenue Service (See <https://www.irs.gov/individuals/information-for-veterans>).

2. CANADA:

- I. Disability pensions provide monthly tax-free payments to War Service Veterans, Canadian Armed Forces members and Veterans, and civilians who served in close support of the Armed Forces during wartime;
- II. The Additional Pain and Suffering Compensation, a tax-free, monthly benefit is also provided as recognition and compensation for any severe and permanent disability, related to service, which creates a barrier to life after service.

- III. The amount of a Disability Pension depends on the degree to which that disability is related to the soldier's service (entitlement); and the extent of the disability (assessment).
- IV. Rank and/or years of military service have no impact on the amount of disability pension
- V. In cases, additional pension amounts are also awarded for qualified dependents (e.g. spouse, common-law partner and/or children).
- VI. For those with disability that require ongoing care to remain in their home, there is The Caregiver Recognition Benefit that recognizes the important role a caregiver delivers on a day-to-day basis this benefit is of \$1000 per month, tax free.

3. NEW ZEALAND:

- I. The following compensation payments made under the Veterans' Entitlements Act 1986 are classified as a "tax free pension or benefit":
 - i. Disability pension paid to a veteran or member of the Forces,
 - ii. War widow/er's pension.
- II. The following compensation payments made under the Military Rehabilitation and Compensation Act 2004 (MRCA) are classified as a "tax free pension or benefit":
 - i. Special rate disability pension,
 - ii. Permanent impairment payments,
 - iii. Wholly dependent partner's pension.

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