

A.F.R.

ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW

Reserved Order

Court No. 2

Original Application No. 323 of 2013

Monday the 9th day of December, 2013

“Hon’ble Mr. Justice S.C. Chaurasia, Member (J)
Hon’ble Lt. Gen. K. Surendra Nath, Member (A)”

Captain Santosh Singh (SL-05026Y), son of Shri Bharat Singh, presently posted at Records, the Punjab Regiment, PIN-908761, C/o 56 APO, presently residing at 18/1, Temple Lane, Ramgarh Cantt. (Jharkhand).

Applicant

By Legal Practitioner Shri P.N. Chaturvedi, Advocate and Shri K.K. Singh Bisht, Advocate.

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi.
2. Chief of the Army Staff, Integrated Headquarter of the Ministry of Defence (Army), South Block, New Delhi-110011.
3. Principal Controller of Defence Accounts (Officers), Golibar Maidan, Pune-411001.
4. Officer-in-Charge AEC Records and Commandant AEC Training College and Centre, Pachmarhi (M.P.). PIN-461881.
5. Pay and Accounts Officer, Pay and Accounts Office (PAO/OR) AEC, Pachmarhi (M.P.) PIN-461881.

Respondents

By Legal Practitioner Mrs. Deepti Prasad Bajpai, Advocate,
Senior Central Government Counsel.

ORDER

Hon'ble Mr. Justice S.C. Chaurasia

1. Heard Shri P.N. Chaturvedi, Learned Counsel for the applicant, Mrs. Deepti Prasad Bajpai, Learned Counsel for the respondents and perused the record.

2. The instant Original Application, under Section 14 of the Armed Forces Tribunal Act, 2007, has been filed on behalf of the applicant and he has claimed the reliefs as under :-

“(a) Issue/pass an order or direction of appropriate nature to quash/set-aside the Integrated HQ of Ministry of Defence (Army) vide their letter No.B/37917/55/AG/PS-3(b) dated 01-03-2013 {Annexure No. A-1(v)} being illegal and passed without application of mind by the respondents.

(b) Issue/pass an order or direction of appropriate nature to the respondents to grant 02-year ante-date of seniority for the purpose of pay with effect from 24-07-2007 to 24-07-2009 to which the applicant is entitled as a matter of right as per Army Instruction 85 of 1974 and other relevant documents on the subject and so mentioned in the Original Application.

(c) Issue/pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.

(d) Allow this application with costs.”

3. Learned Counsel for the respondents has raised a preliminary objection that the applicant was holding the rank of Havildar, when he was granted permanent commission and merely because, the benefit of Modified Assured Career Progression Scheme (MACPS) was extended to him with effect from 01.09.2008, it cannot be accepted that the applicant was holding the rank of Junior Commissioned Officer on the date of grant of Commission i.e. 24.07.2009. She has further submitted that the applicant is not entitled to get two years ante-date seniority for the purpose of pay, because, he was not holding the rank of Junior Commissioned Officer on the relevant date i.e. 24.07.2009.

4. Learned Counsel for the applicant has drawn our attention towards Section 3(xii) and the related Note 14 of the Army Act, 1950 and paragraph 7(c) of the Army Instruction No. 85 of 1974 and has submitted that the applicant was granted the benefit of Modified Assured Career Progression Scheme (MACPS) with effect from 01.09.2008 and he was granted pay of the higher Grade of Naib Subedar (JCO) since then. He has further submitted that the applicant was holding the rank of Havildar on 24.07.2009, when permanent commission was granted to him, but, he shall be deemed to be in the rank of Naib Subedar on the

said date, because, he was getting the pay of said rank with effect from 01.09.2008 and hence, he is entitled to get two years ante-date seniority for the purpose of pay. His contention is that his claim for two years ante-date seniority for pay has been rejected illegally and hence, the letter dated 01.03.2013 [Annexure No. A-1(v)] deserves to be quashed.

5. It is not disputed that the applicant was initially enrolled as Direct Entry Havildar in the Army Educational Corps on 01.03.1996 and was granted permanent regular commission (Special List) with effect from 24.07.2009. It is also not disputed that after implementation of Sixth Central Pay Commission orders, the benefit of MACP Scheme was extended to the applicant with effect from 01.09.2008. Thus, the applicant was holding the actual rank of Havildar and was getting pay of Naib Subedar under MACP Scheme, when he was granted permanent commission (SL) on 24.07.2009.

6. Now the point for determination is as to whether the applicant is entitled to get two years ante-date seniority for the purpose of pay with effect from 24.07.2007 to 24.07.2009 ?

7. The paragraphs 13 and 14 of the letter dated 13.06.2011 of Additional Directorate General Personnel Services, Adjutant General's Branch, Integrated HQs of MoD (Army), New Delhi [Annexure No. A-1(ii)], relating to Administrative Instructions :

Grant of MACP as Granted by the Government Consequent to VIth CPC, may be reproduced as under :-

*“ 13. **Effect on Rank/Status.** On grant of financial upgradation under the Scheme, there will be no change with regard to designation, wearing of rank badges, employability and re-engagement criteria/limits, which will continue to be governed by the actual rank, held by the PBOR. However, financial benefits linked to pay would be admissible viz. Family Accommodation Allowance, Transport Allowance, Travel Entitlements and Terminal benefits etc.*

14. The MACPS contemplates merely placement on personal basis in the immediate higher Grade Pay/grant of financial benefits only and shall not amount to actual/functional promotion of the PBOR concerned.”

8. The Section 3(xii) of the Army Act, 1950 defines the “junior commissioned officer” and it may be quoted as under :-

“(xii) “junior commissioned officer” means a person commissioned, gazetted or in pay as a junior commissioned officer in the regular Army or the Indian Reserve Forces, and includes a person holding a junior commission in the Indian supplementary Reserve Forces, or the Territorial Army, who is for the time being subject to this Act”

9. The Note 14 appended to Section 3 of the Army Act, 1950 is reproduced as under :-

“14. Clause (xii)- Regular Army : see clause (xxi).

“Commissioned, gazetted or in pay”: existence of any one of these conditions makes him subject to the AA as a JCO.”

10. The paragraph 7(c) of the Army Instruction No. 85 of 1974 is quoted as under :-

“7. Officers will be granted commission and/or appointed to Special List as under :-

(a)

(b)

(c) Serving JCOs/NCOs will be granted commission in the rank of 2/Lt. Those who have to their credit 8 years combined service as JC and in the ranks at the time of the grant of commission will, however, be commissioned in the rank of Lt and granted 2 years ante-date for purpose of pay only.”

11. The purpose of MACP Scheme is to grant financial upgradation in the next higher Grade Pay to the individual. From bare perusal of paragraphs 13 and 14 of the letter dated 13.06.2011 [Annexure No. A-1(ii)], as referred to above, it is clear that on grant of financial upgradation, there will be no change with regard to designation, wearing of rank badges etc. and the PBOR will be governed by the actual rank held by him and the grant of financial benefits only shall not amount to actual/functional promotion of the PBOR concerned. In the instant case, the applicant was holding actual rank of Havildar and merely because, he was granted financial upgradation under

the MACP Scheme, he shall not be deemed to be promoted in the higher rank of Naib Subedar (JCO). The applicant was granted financial upgradation in the higher Grade Pay with effect from 01.09.2008, but, was holding the actual rank of Havildar on the date of grant of permanent regular commission (SL) i.e. 24.07.2009. We do not agree with the contention of the Learned Counsel for the applicant that since the applicant was granted higher Grade Pay since 01.09.2008, he shall be deemed to be in the rank of Naib Subedar (JCO) on the date of grant of commission i.e. 24.07.2009, because, he was getting the pay of Naib Subedar on that date.

12. We have considered the concept of “junior commissioned officer” as defined in Section 3(xii) and its Note 14 of the Army Act, 1950 and are of the definite opinion that the applicant did not come within the purview of “junior commissioned officer”, as quoted above, merely because, he was getting the higher Grade Pay of the rank of Naib Subedar on the date of grant of permanent regular commission (SL) under the MACP Scheme. The applicant was not in pay as a JCO in the regular Army and he was merely getting the pay of a JCO on the relevant date. We do not agree with the contention of the Learned Counsel for the applicant that the applicant shall be deemed to be a JCO on the relevant date, because, he was getting the pay of JCO on that

very date. The actual rank of the applicant could not be changed, merely because, he was granted benefit of higher Grade Pay under the MACP Scheme.

13. We have also considered para 7(c) of the Army Instruction No. 85 of 1974 and are of the opinion that in view of the undisputed facts relating to service of the applicant, as mentioned above, he does not fulfill the criteria laid down therein and hence, he is not entitled to get two years ante-date seniority for the purpose of pay and his claim for the same has been rejected rightly by the competent authority and no interference is warranted in the said order.

14. In view of the aforesaid discussions, we are of the view that the instant Original Application lacks merit and it is not fit for adjudication and hence, it cannot be admitted for hearing. Consequently, the instant Original Application is dismissed, at the stage of admission itself.

(Lt. Gen. K. Surendra Nath)
Member (A)

(Justice S.C. Chaurasia)
Member (J)

Dwivedi