

Form No. 4
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
Court No.1 (E. Court)

Ex. A. No 116 of 2017 Inre O.A. No 21 of 2013

Pramod Kumar Singh
By Legal Practitioner for the Applicant

Applicant

Versus

Union of India & Others
By Legal Practitioner for Respondents

Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>04.02.2021</u> <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></p> <p>1. Heard Shri Vinay Pandey, learned counsel for the applicant and Shri Asheesh Agnihotri, Ld. Counsel for the respondents.</p> <p>2. Vide order dated 23.01.2017, both the dismissal order dated 09.12.2012 and discharge order dated 08.01.2013 were set aside with all consequential benefits and respondents were directed to give consequential benefits within four months.</p> <p>3. Learned counsel for the applicant submitted that applicant had submitted certified copy of order passed in O.A. to the respondents to get it implemented by re-instating applicant into service but they did not do so with the result applicant was discharged on 31.01.2017 without being reinstated into service and thus this part of the order was not complied with. He also submitted that respondents have not implemented the order in its spirit as they have not paid arrears of 3 MACP due to him during his total tenure of more than 24 years service and even they have not paid leave encashment of 220 days earned leave due in his account. He submitted that in addition following allowances due to applicant have also not been paid:-</p> <ul style="list-style-type: none">(i) Transport allowance.(ii) Children Education Allowance.(iii) CILQ in lieu of quarter.(iv) Increment from June 01, 2013 to 01 Jan, 2017.(v) PMHA.

4. As for as consequential benefits are concerned, we are of the considered view that applicant has misconception regarding these benefits. A recipient cannot be allowed allowances which are payable only to those who are in actual/active service in the name of consequential benefits. To us consequential benefit includes:-

- (i) Reinstatement.
- (ii) Salary (Basic Pay + Grade Pay + MSP + DA).
- (iii) Arrears of Salary.
- (iv) Medical Facility.
- (v) Canteen Facility.
- (vi) Revision of Pay.

5. We have perused the compliance report and we find that:-

(a). On 27.04.2019, Rs, 18,40,422/- has been credited in applicant's account towards arrears.

(b). Contention of the applicant that he was granted MACP of Naib Subedar w.e.f. 01.09.2008 is wrong. Further submission of applicant that he has been denied MACP of Subedar is also wrong.

(c). To clarify position of the applicant regarding grant of MACP a perusal of Para 8 of Army Headquarters of Ministry of Defence (Army) letter dated 13 June, 2011 is necessary. It provides that only three Modified Assured Career Progression Scheme (MACPs) counted from the entry grade is admissible on completion of 8, 16 and 24 years service and this financial up-gradation is admissible whenever a person has spent 8 years continuously in the same grade pay i.e. if entry grade of Army personnel is Sepoy then he can be granted 1st MACP of Naik, 2nd MACP of Havildar and 3rd MACP of Naib Subedar. It is also clarified that if a Sepoy gets his first regular promotion to the rank of Naik on completion of 5 years of service and then continues in same Grade pay for further 8 years without any promotion, then he would be eligible for 2nd MACPs after completion of 13 years (5+8). As the Modified Assured

Career Progression Scheme (MACPs) was introduced w.e.f. 01.09.2008 and the applicant was promoted to the post of Naik w.e.f. 11.08.1997 on completion of four years and 07 months and 04 days service, therefore, he was not entitled for 1st ACP/MACP. He was promoted to the rank of Havildar w.e.f. 01.11.2000 on completion of 07 years, 09 months and 03 days total service, therefore, he was also not entitled for 2nd ACP/MACP. Only 3rd MACP of Naib Subedar was applicable to the applicant which had already been granted to him w.e.f. 01.11.2008 on completion of 08 years continue service in the rank of Havildar.

6. Respondents have only stated to have paid Rs. 18,40,422/- as arrears towards pay and allowances. No details of Heads under which payments have been made have been mentioned nor have they submitted any calculation sheet. Respondents have also said nothing about earned leave whether it was due, and if so then how much leave was due and if the arrears paid included encashment of leave or not.

7. Respondents are, therefore, directed to file supplementary affidavit of compliance within six weeks from today detailing therein reply to the aforesaid points clearly.

8. List on **07.04.2021** for further consideration.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

UKT/-