

Form No. 4
{See rule 11(1)}
ORDER SHEET

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Court No.1

O.A. No. 586 of 2022 with M.A. No. 694 of 2022

Ex Cpl. Chandra Bhushan Yadav

Applicant

By Legal Practitioner for the Applicant

Versus

Union of India & Others

Respondents

By Legal Practitioner for Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>02.08.2022</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>Memo of Appearance filed by Shri Kaushik Chatterjee, Advocate on behalf of the respondents is taken on record.</p> <p>Heard Shri Sudhir Kumar Singh, Ld. Counsel for the applicant and Shri Kaushik Chatterjee, Ld. Counsel for the respondents.</p> <p>The present Original Application has been filed for the grant of Modified Assured Career Progression (MACP) pay with effect from 01.01.2006.</p> <p>It is submitted by the Ld. Counsel for the applicant that delay in filing of Original Application is not deliberate, but for the reasons stated in affidavit filed in support of delay condonation application.</p> <p>In reply, Ld. Counsel for the respondents submitted that there being a long delay of more than 14 years and the same being not properly explained, delay in filing Original Application should not be condoned.</p> <p>Ld. Counsel for the respondents further submitted that this being the second Original Application, should be dismissed being not maintainable. He further submitted that applicant filed Writ Petition bearing No 55398 of 2003 which was transferred to this Tribunal and registered as T.A. No 1288 of 2010. The TA was allowed vide order dated 18.04.2017. Operative portion of the order are “ T.A. is allowed accordingly. The impugned orders dated 25.10.2001 passed by District Court Martial, contained in Annexure No 1 in respect of the petitioner on 27.08.2001 and subsequent days, finding and recommendation recorded by the COI on 31.05.2000, contained in Annexure No 5 and charge sheet AFF (P)-13 dated 19.12.2000 and subsequent proceedings initiated in pursuance thereof as contained in Annexure No 28 to the petition and the punishment awarded thereof are</p>

set aside with consequential benefits. Petitioner shall be deemed to have been in continuous service to the full of his term of the rank from which he has been dismissed for the pension and other service benefits. However, the payment of arrears of salary is confined to 50%”.

After that applicant filed recall application which was dismissed vide order dated 26.05.2022 with directions. ***“Upon hearing submissions of learned counsel of both sides and going through the records we find that as per order dated 18.04.2017 of this Tribunal in Transferred Application No 1288 of 2010, five components of the order had to be complied with by the respondents which they have complied with. The claim of the applicant for the grant of MACP, Bonus, Transport Allowance is not included in the order and, therefore, applicant is not entitled to these. So far as Part II Order is concerned, the same has already been published. The recall application is, therefore, liable to be dismissed, hence dismissed.***

It is submitted by the Ld. Counsel for the respondents that recall application filed by the applicant being based on same cause of action and for same relief being dismissed by this Tribunal, the second Original Application for the same relief on the same cause of action cannot be entertained being not maintainable.

During the course of hearing, Ld. Counsel for the applicant admitted that this is the second Application for the grant of MACP on the same cause of action on which the Recall Application was dismissed vide order dated 26.05.2022 with observations stated above.

In view of the fact that present Original Application is the second Original Application for grant of MACP based on the same cause of action on which earlier Recall Application was dismissed by this Tribunal, we are of the firm view that present Original Application is liable to be dismissed being not maintainable.

We are also of the view that there being a delay of more than 14 years and the same being not properly explained, Original Application is liable to be dismissed on the ground of delay also.

Accordingly, Original Application is **dismissed** being barred by time and not maintainable also.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Ukt/-