

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No 44 of 2023**

Monday, this the 7th day of August, 2023

Hon'ble Mr. Justice Anil Kumar, Member (J)

Hon'ble Maj Gen Sanjay Singh, Member (A)

Ex No. 3008204K Nk (MACP) Yadvendra Singh son of Lalla Singh resident of Village and Post-Chitgarh, Tehsil-Rampur Bagelan, District-Satna, M.P.

..... Applicant

Ld. Counsel for the Applicant: **Shri Vinay Pandey**, Advocate

Versus

1. Union of India, through Secretary Ministry of Defence (Army), DHQ, PO-New Delhi-11.
2. The Chief of the Army Staff, Army Headquarters, Sena Bhawan, New Delhi.
3. The Officer-in-Charge Records, The Rajput Regiment, PIN-900427, C/o 56 APO.
4. Principal Controller of Defence Accounts, Draupadi Ghat, Prayagraj (UP).

..... Respondents

Ld. Counsel for the Respondents : **Mrs Anju Singh**,
Central Govt Counsel

ORDER (Oral)

1. The instant Original Application has been filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

(a) Issue/pass an order or direction of appropriate nature to direct the respondents to grant the benefit of second MACP to the applicant with effect from 19 December, 2020.

(b) Issue/pass an order or direction of appropriate nature to the respondents to make the payment of arrears along with interest accrued to the applicant due to revision of his pension and continue to pay regular pension to the applicant in the revised rate.

(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.

2. Brief facts of the case are that the applicant was enrolled in the Army on 18.12.2004 and was discharged from service w.e.f. 31.12.2021 (AN) after rendering more than 17 years of service in terms of Rule 13 (3) III (i) of Army Rules, 1954 on fulfilling the conditions of his service. The applicant was granted 1st Modified Assured Career Progression (MACP) on 18.12.2012 on completion of 08 years service and was due for second financial upgradation on completion of 16 years of service as on 18.12.2020. On account of submission of unwillingness certificate to undergo promotion cadre course applicant was denied grant of 2nd MACP

and was discharged from service without granting benefits of 2nd MACP. Thereafter, applicant approached to the respondents No 3 through his counsel for grant of benefit of 2nd MACP vide letter dated 05.02.2022 which being denied vide order dated 07.03.2022, this O.A. has been filed.

3. Learned counsel for the applicant submitted that the Government had introduced Assured Career Progression (ACP) Scheme on recommendation of Vth Central Pay Commission. The said scheme was revised with three financial up-gradations i.e. after 8 years, after 16 years and after 24 years of service. Subsequently, in May 2011, the Government introduced Modified Assured Career Progression Scheme (in short, MACPS) for Personnel Below Officer Rank (PBOR) superseding the previous ACP scheme. The scheme was made to take effect from 01.09.2008 and it was later effective w.e.f. 01.01.2006. The grievance of the applicant is that he has been denied the benefits of the said scheme on the ground that he had expressed unwillingness to undergo promotion cadre course. It is further submitted by learned counsel for the applicant that despite executing the undertaking of unwillingness, the right of the applicant to receive benefits conferred by MACP did not extinguish for the reason that the applicant did not get opportunity of promotion. It is also submitted that the applicant after discharge from service approached the respondents for benefits of the scheme but it was denied merely on the ground that he had rendered unwillingness certificate. He further submitted that there are no enabling

provision in the MACPS which could disentitle the applicant as the applicant had already completed his terms of engagement. The applicant was due to be granted second financial upgradation on completion of 16 years of service in the year 2020. He further submitted that the only condition that was available to the applicant that if the applicant has no opportunity for promotion for want of vacancy in the next higher rank, the benefit of MACP could not be denied to him merely on the basis of unwillingness certificate given by the applicant.

4. Learned counsel for the applicant further submitted that applicant never gave his unwillingness to forgo further promotion and mere undertaking of unwillingness given by him would not extinguish the right for grant of the benefits of 2nd MACP. He placed reliance upon the judgment of AFT, Kochi Bench in O.A. No. 170 of 2016, ***Ex Hav Zubair P vs Union of India & Others***, and submitted that in view of the aforesaid judgment, applicant is entitled for grant 2nd MACP on completion of 16 years of service.

5. On the other, hand learned counsel for the respondents submitted that subsequent to issue of MACPS, detailed administrative instructions for grant of MACPS were issued by the Army Headquarters in June 2011 vide letter dated 13.06.2011. Para 21 of the aforesaid instructions clarifies that if an individual refuses promotion, MACPS will also be denied. Para 15 of the Appendix to the instructions further clarifies that unwillingness to

attend promotion cadre amounts to unwillingness for promotion. The applicant was granted 1st MACPS w.e.f. 18.12.2012 on completion of eight years of service and was due for grant of 2nd MACP w.e.f. 18.12.2020. Thereafter, applicant came up in seniority for promotion cadre, however, the applicant had rendered unwillingness certificate on 30.05.2018 to appear in promotion cadre. Further contention made by learned counsel for the respondents is that as per Govt of India, Ministry of Defence (Army) letter dated 11.07.2018 when a regular promotion offered to an employee was refused by him before becoming entitled to a financial upgradation, no financial upgradation shall be allowed. As such applicant was not granted stagnation due to refusal to undergo promotion cadre course. His contention is that since applicant had denied undergoing promotion cadre course, he was not granted 2nd MACP in terms of aforesaid provisions. He pleaded for dismissal of O.A.

6. We have heard learned counsel for the parties and perused the material placed on record.

7. Applicant was enrolled in the Army on 18.12.2004. He was granted 1st MACP in the year 2012 on completion of 08 years service. His second MACP was due in the year 2020 but since he submitted his unwillingness certificate dated 30.05.2018 to undergo promotion cadre course, 2nd MACP due to him was denied by the

respondents and he was discharged from service w.e.f. 31.12.2021 (AN).

8. The only contention of the respondents is that applicant was denied 2nd MACP on the ground that he had submitted an unwillingness certificate for undergoing promotion cadre course, as such he was ineligible for grant of 2nd MACP. Attention of the Tribunal was invited to Para 15 of Appendix 'X' to Army Headquarters Administrative Instructions which postulates that unwillingness to attend promotion cadre course also amounts to unwillingness/refusal for promotion. Respondents' contention is that the applicant submitted his unwillingness which made him ineligible for the benefits of 2nd MACP.

9. It is noticeable that ACP scheme of 2003 as well as MACP scheme of 2011 merely envisaged grant of financial benefits to Personnel Below Officer Rank (PBOR) through placement in a higher pay scale and was not to be considered as functional or regular promotion. It cannot be said that unwillingness certificates rendered for promotion cadre in accordance with Record Office Instructions automatically implied that the person was ineligible for MACPs in this case, especially in light of Army HQ letter dated 20.07.2017, which stipulates that ".....individual unwilling for promotion cadre would still be eligible for MACP upgradation unless he is explicitly willing for promotion."

10. The record shows that applicant had submitted his unwillingness certificate dated 30.05.2018 (Annexure-4) to undergo promotion cadre course but he never refused to accept MACP. For convenience sake, the said certificate is reproduced as under:-

“UNWILLINGNESS CERT

I, No 3008204K Sep Yadvender Singh of 30 RAJPUT presently posted with 4 RAPID Def & Emp Coy am willing/unwilling to attend promotion cadre Sep/Lnk to Nk commencing w.e.f. 01 May 2018 to 09 Jun 2018 at Unit.”

11. Clarification with regard to unwillingness to attend promotion cadre and unwillingness for promotion has been given vide letter dated 20.07.2017 issued by Adjutant General’s Branch, IHQ of MoD (Army) as under:-

- “1. “x x x x x
2. *The proposal has been analysed by this Dte in light of existing rules/policies. It is clarified that MACP is granted in lieu of promotion whereby financial upgradation is granted whenever a person has spent eight years continuously in the same grade pay at 8, 16 and 24 years of service, whichever is earlier provided the indl meets the required criteria. The scheme was implemented to provide financial benefit to the stagnating personnel wherein indl was willing for promotion but could not be promoted due to limited vacancies. The overall Govt policy on the subject has been adapted to the conditions of Def Forces. The indl, denying the offer of promotion is fully aware of the implications incl MACP and hence is not entitled for any relaxation at a later stage.*
3. *It is also clarified that unwillingness to attend promotion cadre cannot be equated to unwillingness for promotion. The same has already been clarified by our letter No B/33513/ACP/AG/PS-2 (c) dt 13 Jun 2011 (copy encl). Hence, an indl unwillingness for promotion cadre would still be eligible to MACP upgradation unless he is explicitly unwilling for promotion.”*

The aforesaid ruling makes it clear that unwillingness to attend the promotion cadre course and unwillingness to accept further promotion cannot be automatically equated.

12. We observe that the applicant was in the seniority list for promotion cadre course and he was offered the promotion cadre

course commencing from 01.05.2018 to 03.06.2018 but he submitted his unwillingness vide certificate dated 30.05.2018. This does not automatically mean that he would have been promoted to the next higher rank also, because that would depend on the vacancy position at the time of actual promotion. Attending a promotion cadre course allows a person to become eligible for promotion. It is one among several eligibility criteria necessary for promotion. Others inter alia being medical category, ACR, courses attended, vacancy, length of service/seniority, age etc. More so, applicant was given only one opportunity to attend promotion cadre and thus, there were two more chances to detail the applicant to attend the promotion cadre but no such opportunity was provided to the applicant.

13. In our considered view, there is no enabling provision in the MACP Scheme which could disentitle the applicant for grant of MACP merely because he submitted his unwillingness certificate for promotion cadre especially in light of Para 3 of the policy letter dated 20.07.2017 referred to at Para 11 of this order.

14. As a result of foregoing discussion, the O.A. is **allowed**. Since, the respondents have already granted benefit of 1st MACP, i.e. Naik to the applicant, the respondents are directed to grant benefit of 2nd MACP due to him on 18.12.2020 by ignoring the unwillingness certificate for cadre given by him at the time of promotion cadre course from Sepoy/Lance Naik to Naik. The

respondents shall take appropriate decision expeditiously, preferably within four months from the date of receipt of certified copy of this order and grant pensionary benefits to the applicant from the date of discharge w.e.f. 01.01.2022. Default will invite interest @ 8% p.a.

15. No order as to costs.

16. Pending Miscellaneous Application(s), if any, shall stand disposed off.

(Maj Gen Sanjay Singh)
Member (A)

Dated: 07.08.2023
rathore

(Justice Anil Kumar)
Member (J)