

Court No. 2**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 45 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. 3008295Y Nk (MACP) Avinash Pandey

S/o Nand Lal Pandey

R/o Village and Post – Nahora, Tehsil – Kerakat, District – Jaunpur

..... Applicant

Learned counsel for the : **Shri Vinay Pandey**, Advocate

Applicant

Versus

1. Union of India through Secretary, Ministry of Defence, (Army) DHQ PO, New Delhi-11.
2. The Chief of 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

Learned counsel for the : **Shri J.N. Mishra**, Advocate

Respondents.

Central Govt. Counsel

ORDER (Oral)

1. The instant Original Application has been filed 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 respondent to grant the benefit of Second

MACP to the applicant with effect from 23 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. The factual matrix on record is that the applicant was enrolled in the Army on 22.12.2004 and was discharged from service on 31.12.2021 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 benefit of 1st MACP of Naik w.e.f. 22.12.2012, however, he has not been granted benefits of 2nd MACP on the grounds that the applicant has given unwillingness for further promotion cadre and thus, applicant was discharged from service in the rank of Naik on 31.12.2021 (AN). Being aggrieved, the applicant has filed the present Original Application for grant of benefit of 2nd MACP on completion of 16 years of service as on 22.12.2020.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Army on 22.12.2004 and was discharged from service on 31.12.2021 after rendering more than 17 years of service. The Government had introduced Assured Career Progression (ACP) Scheme on recommendation of Vth Central Pay Commission. The

said scheme was revised with MACP granting three financial up-gradations i.e. after 8 years, 16 years and 24 years of service in May 2011. The scheme was made to take effect from 01.09.2008 which was later on made effective w.e.f. 01.01.2006. The crux of grievance of applicant is that applicant has been denied the benefits of the said scheme on the ground that he had expressed unwillingness to undergo promotion cadre. 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 MACPS 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 was denied the same merely on the ground that he had given 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 first Modified Assured Career Progression (MACP) which he was granted in 2012 on completion of 08 years of service and was due for second financial up-gradation on completion of 16 years of service w.e.f. 22.12.2020 but the same has not been granted to the applicant. 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 placed reliance on the judgment of the AFT, Kochi Bench in O.A. No. 170 of 2016, ***Ex Hav Zubair P vs Union of India & Others***, decided on 21.02.2017 and submitted that in view of the aforesaid judgment, applicant is entitled for grant of 2nd MACP on completion of 16 years of service w.e.f. 22.12.2020 and pensionary benefits w.e.f. 01.01.2022.

5. Per contra, learned counsel for the respondents submitted that applicant was granted 1st MACP in the rank of Naik w.e.f. 22.12.2012. The applicant was due for discharge from service on completion of his normal service/age limit/terms of engagement and was discharged from service on 31.12.2021 (AN). The applicant served a legal notice dated 04.02.2022 which was suitably replied by the Records vide letter dated 07.03.2022 stating therein that applicant has expressed his unwillingness for further promotion cadre, hence, he became ineligible for benefit of 2nd MACP. He further submitted that as per Para 15 of SAI/1/2008, Govt. of India, Ministry of Defence enhanced the benefit of Assured Career Progression (ACP) Scheme vide its letter dated 03.08.2009 which was further redesignated as Modified Assured Career Progression Scheme (MACPS) vide IHQ of MoD (Army) letter dated 13.06.2011 with financial upgradation on completion of 8,16 & 24 years of service, i.e. 1st, 2nd and 3rd MACP respectively. The MACP scheme was made operational w.e.f. 01.06.2006. Since the applicant has opted unwilling for further

promotion/promotion cadre when he came in seniority, therefore, applicant is not entitled for financial upgradation to 2nd MACP (Havildar grade) on completion of 16 years of service as per policy in vogue. He pleaded for dismissal of O.A.

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

7. The applicant was enrolled on 22.12.2004 and was discharged from service on 31.12.2021 (AN) after serving more than 17 years of service, meaning thereby he was eligible to be granted benefit of first MACP on completion of 08 years of service which has been granted to the applicant in 2012 (Naik) and second MACP was due on completion of 16 years of service on 22.12.2020 which has not been granted to the applicant prior to his discharge from service.

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.

9. It is worthy of notice 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 were irrevocable.

10. The record shows that applicant had submitted his unwillingness certificate to undergo promotion cadre course but he never refused to accept MACP, though unwillingness certificate has not been annexed by the parties. The result of Sep/L Nk to Nk promotion cadre conducted from 25.12.2017 to 03.02.2018 where in Remarks column his unwillingness is shown as per Appendix filed alongwith counter affidavit. For convenience sake, extract of result is reproduced as under:-

**“RESULT : SEP/LNK TO NK PROMOTION CADRE CONDUCTED
FROM 25 DEC 2017 TO 03 FEB 2018”**

S. No.	Army No	Rank	Name	Coy/Loc	Cadre	Remarks
1 to 61	X	X	X	X	X	X
62	3008295Y	L Nk	Avinash Kumar Pandey	B/4 Inf Div	-	Unwilling
63 to 64	X	X	X	X	X	X

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 merely because the applicant was in the seniority list for promotion cadre course he was offered the promotion cadre course for the period from 25.12.2017 to 03.02.2018. This does not automatically imply 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 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 promotion cadre but no such opportunity was provided to the applicant.

13. In our considered view, there is no enabling provision in the MACPS which could disentitle the applicant for grant of MACP merely because he submitted his unwillingness certificate for a 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 22.12.2020 by ignoring the unwillingness certificate of 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 next date of discharge from service, i.e. w.e.f. 01.01.2022. Delay shall invite interest @ 8% per annum till actual payment.

15. No order as to costs.

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

(Maj Gen Sanjay Singh)
Member (A)

Dated: 7th August, 2023

SB

(Justice Anil Kumar)
Member (J)