

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No 330 of 2019**Thursday, this the 11<sup>th</sup> day of February, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**No. 9512259-Y Ex Hav/AEC Vikram Singh Bhandari  
S/o Shri Dev Singh Bhandari  
R/o Village – Gaithana, Post – Jajardewal,  
Distt – Pithoragarh, Uttarakhand PIN-262501

..... Applicant

Ld. Counsel for the Applicant: **Shri R. Chandra**, Advocate

Versus

1. Union of India, through the Secretary, Ministry of Defence, Government of India, New Delhi-110011.
2. Chief of the Army Staff, Army Headquarters, DHQ Post Office, New Delhi – 110011.
3. Officer-in-Charge Army Education Corps Records, PIN- 908777, C/o 56 APO.
4. Pay Accounts Office (Other Ranks), Pachmarhi Cantt, District – Hoshangabad (M.P.)

..... Respondents

Ld. Counsel for the Respondents : **Shri Kaushik Chatterji**,  
Central Govt Counsel.**ORDER**

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

- “(i) The Hon'ble Tribunal may be pleased to set aside the order dated 06/07/2013 (Annexure A-1).
- (ii) The Hon'ble Tribunal may be pleased to direct the respondents to grant the benefit of MACP-III (Nb Sub)

Grade on completion of 8 years of service on 17/12/2002 with arrears along with interest at the rate of 24 percent per annum.

- (iii) Any other appropriate order or direction which the Hon'ble Tribunal may deem just and proper in the nature and circumstances of the case.”

2. The factual matrix on record is that the applicant was enrolled in the Army in Army Education Corps as Havildar on 17.12.1994 and was discharged from service after rendering 15 years, 08 months and 15 days of service before fulfilling the conditions of enrolment/service at his own request on extreme compassionate grounds. Applicant is in receipt of service pension of the rank of Havildar and 20% disability pension for life from the date of discharge. Grievance of the applicant is that he has been denied benefit of Modified Assured Career Progression Scheme (MACP) in contravention to the recommendation of the 6<sup>th</sup> Central Pay Commission after completion of 8 years of service in the same rank i.e. Havildar. The applicant preferred an appeal dated 21.06.2013 before respondent No. 3 for grant of MACP-III (Nb Sub Grade), but the same has been rejected stating that “MACP is applicable w.e.f. 01.09.2008 and since you have rendered permanent unwillingness to undergo criteria course/promotion cadre w.e.f. 09.11.2001, which tantamount to refusal for further promotion”. Being aggrieved, the applicant has filed present original application.

3. Learned counsel for the applicant submitted that MACP is applicable w.e.f. 01.01.2006, hence after completion of 8 years of service, i.e. on 17.12.2002, applicant is eligible for MCAP-III (Nb Sub Grade) and he should be granted benefit accordingly. He placed

reliance on judgment of the Hon'ble Apex Court in the case of ***Union of India and Ors vs. Balbir Singh Turn & Anr*** in Civil Appeal Diary No. 3744 of 2016, decided on 08.12.2017 in which the Hon'ble Court has held in Para 11 that :-

“We are only concerned with the interpretation of the Resolution of the Government which clearly states that the recommendations of 6<sup>th</sup> CPC as modified and accepted by the Central Government is so far as they relate to pay structure, pay scales, grade pay etc. will apply from 01/01/2006. There may be some gainers and some losers but the intention of the Government was clear that this scheme which is part of the pay structure would apply from 01/01/2006. We may also point out that the Resolution dated 30.08.2008 whereby the recommendation of the Pay Commission has been accepted with modification and recommendations with regard to pay structure, pay scale, grade pay etc. have been made applicable from 01.01.2006. This is a decision of the Cabinet. This decision could not have been modified by flies in the face of the Cabinet decision reflected in the Resolution dated 30.11.2008. Thus, administrative instruction dated 30.05.2011 is totally ultra virus the Resolution of the Government.”

4. Learned counsel for the respondents submitted that MACP scheme was made operational for the PBORs w.e.f. 01.09.2008 vide Govt. of India letter dated 30.05.2011 and administrative instructions of this effect have been issued vide IHQ of MoD (Army) letter dated 13.06.2011. As per 21 of administrative instruction “if an individual refuses promotion, MACP will also be denied”. The matter has been further clarified vide IHQ of MoD (Army) letter dated 15.10.2014 that “unwilling to attend promotion cadre amounts to unwillingness/refusal fo promotion. As such unwilling to attend criteria/mandatory course also amounts to unwillingness/refusal to promotion”. He further submitted that as per AEC ROI 02/2000 and 01/2007, an havildar instructor must have to qualify mandatory and criteria courses which will make him eligible for promotion to next higher rank i.e. Naib Subedar. As the applicant while serving in HQ 1 Corps has given

permanent unwillingness certificate on 09.11.2001 to undergo Chinese language Course Serial 42, which was criteria course and directly linked with his promotion. Hence, in accordance with prevailing policy on the subject, the applicant was not granted the benefits of financial upgradation under the MACP Scheme.

5. We have heard learned counsel for the parties and have perused the record.

6. In a similar case, Armed Forces Tribunal, Regional Bench, Kochi passed a judgment in O.A. No. 103 of 2011: ***Ex Havildar Abraham. C.U. and others vs. Union of India and others***, decided on 17.07.2013 whereby the Tribunal has directed the scheme to be implemented from 01.01.2006. The relevant portion of observations made by the Armed Forces Tribunal, Kochi Bench, needs reproduction, and is reproduced as under:

*“9. So far as the claim of the applicants for the benefit of the Assured Career Progression Scheme introduced by the respondent by the letter dated 3.8.2003 (Annexure A2) is concerned, it has no substance. The Government, keeping in view the recommendations of the 5th Central Pay Commission decided to grant the benefit to only those persons who held the rank of Sepoy. The benefit was not extended to any other rank of the Army including direct entry Havildars. There could not be any claim for parity or equality with Sepoy, as the Havildar being superior in rank could not be said to be at par with Sepoy, as such, both the Sepoy and Havildar were two different and distinct classes, therefore, there was no violation of the provisions of Articles 14 and 16 of the Constitution of India, in restricting the benefit of Assured Career Progression Scheme to the cadre of Sepoy only. So far as the benefit of the MACPS as introduced by the respondent No.1 vide letter dated 30th May, 2011 (Annexure A5) is concerned, it was made available not only to Sepoy but also other ranks falling with the category of PBORs, including direct entry Havildars. The introduction of MACPS was made according to the recommendations made by the 6th Central Pay Commission in para 2.3.34, which may be reproduced as follows:*

*“2.3.34 Presently PBORs in Defence Forces are eligible for two time bound upgradations on completion of 10 and 20 years of service. The Defence Forces have demanded*

*reduction of period for time bound upgradations to 8 and 12 years. Other suggestions have also been made regarding residency periods for promotion of PBORs. The Commission notes that under the Scheme of Assured Career Progression (ACPS) for civilians, the upgradations are given on completion of 12 and 24 years of service. Demands for reduction of the residency period in case of civilians were also received. However, the Commission has been unable to accept this demand keeping in view the revised scheme of running pay bands and annual increments as a percentage of pay. In such a scenario, any reduction in the prescribed residency period under ACPS for Defence Forces personnel would not be justified especially when the residency period requirements in their case are already lower than in the case of civilian employees. Accordingly, the residency periods for time bound upgradations for PBORs shall remain unchanged. Under the Modified Assured Career Progression now being proposed for the civilians, financial upgradations will entail one increment without any change in the grade pay. In consonance with the scheme of the Report to ensure parity between civilians and Defence Forces, a similar dispensation needs to be extended in case of the latter. The Commission, therefore, recommends that the time bound promotion scheme in case of PBORs shall allow two financial upgradations on completion of 10 and 20 years of service as at present. The financial upgradations under the scheme shall allow benefit of pay fixation equal to one increment along with the higher grade pay. As regards the other suggestions relating to residency period for promotion of PBORs, Ministry of Defence may set up an Inter Services Committee to consider the matter after the revised scheme of running pay bands is implemented.”*

*Accordingly, the Commission recommended that time bound promotion scheme in the case of PBORs shall allow two financial upgradation on completion of 10 and 20 years of service, and the upgradation shall be provided by way of pay fixation equal to one increment along with higher grade pay in the concerned pay band. It appears that the Government accepted the recommendation of the 6th Central Pay Commission with further liberalisation to the effect that upgradation was made applicable three times. The first upgradation on completion of 8 years of service, second upgradation on completion of 16 years of service and third upgradation on completion of 24 years of service. Most of the recommendations of the 6th Central Pay Commission regarding pay and allowances were made effective from 1.1.2006. Therefore, the intention behind the introduction of Modified Assured Career Progression Scheme was to provide the benefit of the said scheme with effect from the said date. But, it appears that the Government was to constitute a Committee, therefore, the delay occurred in bringing out the scheme into operation. Accordingly, the Government ultimately issued the letter, Annexure A5, but we fail to understand as to what prompted respondent No.1 to implement*

MACPS only with effect from 1st September, 2008. We do not find any reason as to why the scheme was not introduced with effect from 1.1.2006, especially when the recommendations of the 6th Central Pay Commission with regard to pay etc. were implemented by the respondent No.1 with effect from 1.1.2006. The policy to introduce MACPS with effect from 1.9.2008 instead of 1.1.2006 has resulted in depriving the benefits to direct entry Havildars and other PBORs, who were in service on 1.1.2006 and retired before 1st September, 2008, and had the eligibility to get the benefit of the Scheme. Sepoys had been granted the benefit of the old scheme of ACP in the year 2003 and were even allowed to avail the benefit of the same scheme from 1.1.2006 to 31.8.2008. So, they were not, in any way, in a disadvantageous position due to the delayed implementation of the MACPS, but it affected all those who had no benefit of ACP, as introduced by the 5th Central Pay Commission and became entitled to MACPS as per the recommendations of the 6th Central Pay Commission and retired prior to 1.9.2008. Article 14 of the Constitution of India ensure to all equality before the law and equal protection of the laws. The equality clause so provided in the Constitution can be made subject to a valid classification, based on a just objective. The result to be achieved by the just objective pre-supposes, the choice of some differential treatment over others. To put it otherwise, the test for a valid classification may be summarised as a distinction based on a classification founded on an intelligible differentia, which has a rational relationship with the object sought to be achieved. Whenever a cut off date is fixed to categorise one set of persons for favourable consideration over others, twin test for classification, namely the distinguishing rationale based on a just objective and the choice of differentiating one set of person from another having a reasonable nexus to the objective sought to be achieved, must necessarily be satisfied. Learned counsel for the applicant submitted that there was no justification to enforce MACPS from 1.9.2008 instead of 11.2006 by depriving those who retired after 1.1.2006 but before 1.9.2008. According to the learned counsel, there was no rationale behind the classification nor it had any nexus to the object sought to be achieved by making the classification. He next tried to contend that there could be a financial reason for keeping the MACPS scheme in abeyance from 1.1.2006 to 31.8.2008. But, it was not a valid reason to deny the benefits with effect from 1.1.2006 especially when most of the benefits extended by the 6th Central Pay Commission have been extended with effect from that date. Prescription of pay scales, OA No.103 of 2010 - 11 - schemes for promotion including time bound scale such as ACP, MACPS, is a very complex exercise to be done by expert bodies like the Pay Commission, employer etc. and cannot be taken by any Courts or Tribunals on their own, due to the simple reason that they lack necessary expertise to undertake the issue. In this view of the matter, we have no option except to remit the matter to respondent No.1 to give due consideration to the view points of the applicants and take appropriate decision thereon keeping in view the recommendations and the objects behind the recommendations of the 6th Central Pay Commission and the imports of Articles 14 and 16 of the Constitution of India. In our view, it will also be just and expedient to provide an opportunity to the applicants to give a detailed

*representation/ representations to the respondent No.1, justifying the claim for implementation of the Modified Assured Career Progression Scheme with effect from 1.1.2006, which shall be given preferably within one month from today.”*

7. Subject to above observations, the Tribunal in O.A. No. 103 of 2011 (supra) directed the respondents to consider the claim of the applicants for implementation of the Modified Assured Career Progression Scheme with effect from 01.01.2006 instead of 01.09.2008. The operative portion of the order is reproduced as under:

*“10. The Original Application is disposed of with the direction to the respondent No.1 to consider the claim of the applicants for implementation of the Modified Assured Career Progression Scheme with effect from 1.1.2006 instead of 1.9.2008. The respondent No.1 while considering the applicants' matter will have to give due consideration their representations also. The respondent No.1 to take appropriate decision expeditiously, preferably within six months from the date of receipt of a copy of the representation.”*

8. Hon'ble Supreme Court in Civil Appeal Diary No. 3744 of 2016 and other connected cases had the opportunity to consider the same issue. Upon consideration of the MACP Scheme as applicable to the Armed Forces with regard to PBORs who retired after 01.01.2006 but prior to 31.08.2008, in paras 6, 7, 10 and 11 held as under:

*“6. The question that arises for decision is whether the benefit of MACP is applicable from 01.01.2006 or from 01.09.2008.*

*7. The answer to this question will lie in the interpretation given to the Government Resolution, relevant portion of which has been quoted hereinabove. A bare perusal of Clause (i) of the Resolution clearly indicates that the Central Government decided to implement the revised pay structure of pay bands and grade pay, as well as pension with effect from 01.01.2006. The second part of the Clause lays down that all allowances except the Dearness Allowance/relief will be effective from 01.09.2008. The AFT held, and in our opinion rightly so, that the benefit of MACP is part of the pay structure and will affect the grade pay of the employees and, therefore, it cannot be said that it is a part of allowances. The benefit of MACP if given to the respondents would affect their pension also.*

*10. As already held by us above, there can be no dispute that grant of ACP is part of the pay structure. It affects the pay of the employee and he gets a higher grade pay even though it may be in the*

*same pay band. It has been strenuously urged by Col. R. Balasubramanian, learned counsel for the UOI that the Government took the decision to make the Scheme applicable from 01.09.2008 because many employees would have lost out in case the MACP was made applicable from 01.01.2006 and they would have had to refund the excess 10 amount, if any, paid to them. His argument is that under the old Scheme if somebody got the benefit of the ACP he was put in the higher scale of pay. After merger of pay scales into pay bands an employee is only entitled to higher grade pay which may be lower than the next pay band. Therefore, there may be many employees who may suffer.*

*11. We are only concerned with the interpretation of the Resolution of the Government which clearly states that the recommendations of 6th CPC as modified and accepted by the Central Government in so far as they relate to pay structure, pay scales, grade pay etc. will apply from 01.01.2006. There may be some gainers and some losers but the intention of the Government was clear that this Scheme which is part of the pay structure would apply from 01.01.2006. We may also point out that the Resolution dated 30.08.2008 whereby the recommendation of the Pay Commission has been accepted with modifications and recommendations with regard to pay structure, pay scales, grade pay etc. have been made applicable from 01.01.2006. This is a decision of the Cabinet. This decision could not have been modified by issuing executive instruction. The letter dated 30.05.2011 flies in the face of the Cabinet decision reflected in the Resolution dated 30.08.2008. Thus, administrative instruction dated 30.05.2011 is totally ultra vires the Resolution of the Government.”*

9. The case of the applicant is squarely covered by the decisions rendered by the Hon'ble Supreme Court (supra) and the Armed Forces Tribunal, Regional Bench Kochi (supra) and we feel that the same directions be issued to the respondents to consider the claim of the applicant for implementation of the MACP from 01.01.2006 instead of 01.09.2008. The applicant's unwillingness Certificate for undergoing Chinese Course cannot debar him for grant of benefit of MACP. As the policy for implementation of MACP benefit is effective from 01.01.2006, hence, applicant will also be eligible for MACP benefit from 01.01.2006.

10. The impugned order dated 06.07.2013 passed by the respondents is set aside. Original Application is disposed of with the direction to the respondents to consider the claim of the applicant for

implementation of the Modified Assured Career Progression Scheme with effect from 01.01.2006 and grant all consequential benefits (Nb Sub grade w.e.f. 01.01.2006, subsequent increments and pensionary benefits) to the applicant. The respondents shall take appropriate decision expeditiously, preferably within four months from the date of receipt of certified copy of this order. Delay shall invite interest @ 8% per annum till actual payment.

11. No order as to costs.

**(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)**  
**Member (A) Member (J)**

Dated: February, 2021  
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