

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No 733 of 2021**Friday, this the 10th day of February, 2023**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)****Hon'ble Major General Sanjay Singh, Member (A)**

No. 14808635-L Ex Hav/MT Sanjay Kumar Gupta
 S/o Shri Mahendra Gupta
 R/o Village – Gopalpur, Post Office – Gopalpur, Tehsil – Rasra,
 District – Ballia (U.P.) – 221701

..... Applicant

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

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi-110011.
2. The Chief of the Army Staff, Integrated HQ, Ministry of Defence (Army), South Block, New Delhi – 110011.
3. Officer-in-Charge Records, Sena Seva Corps Abhilekh (Dakshin), ASC Records (South), Bangalore – 221701.
4. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad.

..... Respondents

Ld. Counsel for the Respondents : **Shri R.K.S. Chauhan**,
Central Govt Counsel**ORDER (Oral)**

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:-

- “(a) To issue/pass an order or direction to the Respondents to grant the third financial up-gradation of Nb Sub grade

under Modified Assured Career Progression (MACP) Scheme with effect from 30.12.2017.

- (b) Any other relief as considered proper by this Hon'ble Tribunal be awarded in favour of the applicant.
- (c) Cost of the O.A. be awarded to the applicant."

2. The factual matrix on record is that the applicant was enrolled in the Army on 30.12.1993 and was discharged from service on 31.12.2019 after rendering more than 26 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 first Modified Assured Career Progression (MACP) in the rank of Naik on 30.12.2003 and he was actually promoted to the rank of Naik on 19.09.2007. The applicant was granted MACP-II (Havildar grade) w.e.f. 30.12.2009 on completion of 16 years of service and was actually promoted to the rank of Havildar on 05.03.2015 on completion of 24 years of service. The applicant was due to grant of MACP-III (Nb Sub grade) on 30.12.2017 but the same was not granted on the ground of Unwillingness Certificate submitted by the applicant for NMT Course on 15.02.2017. On account of submission of unwillingness certificate applicant was denied further promotion with regard to MACP-III and was discharged from service without granting benefits of third MACP. This O.A. has been filed for grant of benefit of 3rd MACP on completion of 24 years of service as on 30.12.2017.

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 a Modified Assured Career Progression Scheme (in short, MACPS) for Personnel Below Officer Rank superseding the previous ACP scheme. The scheme was made to take effect from 01.09.2008 and it 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 course (NMT). 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 granted first and second MACP benefit and was due to be granted 3rd MACP as on 30.12.2017 on completion of 24 years of service. 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 upon the judgment of the Hon'ble Apex Court in Civil Appeal Diary No. 3744 of 2016 **Union of India & Others vs. Balbir Singh Turn & Another**, decided on 08.12.2017 and AFT, Kochi Bench judgment in O.A. No. 170 of 2016, **Ex Hav Zubair P vs Union of India & Others**, decided on 21.02.2017 this Tribunal judgment in OA No. 178 of 2022, **L/Nk Naresh Naudiyal vs. Union of India & Others**, decided on 07.09.2022 and submitted that in view of the aforesaid judgments, applicant is entitled for grant 3rd MACP on completion of 24 years of service as on 30.12.2017.

5. The contentions advanced by learned counsel for the respondents, per contra, are 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 clarified that if an individual refuses promotion, MACPS will also be denied. Para 15 of the Appendix to the instructions clarified that unwillingness to attend promotion cadre amounts to unwillingness or refusal for promotion. The applicant was granted 1st and 2nd MACP in the service as due to him. Thereafter, applicant came up in seniority for promotion cadre for promotion to the rank of Naib Subedar, however, the applicant has rendered permanent unwillingness certificate for undergoing promotion cadre course (NMT) which was schedule from 27.02.2017

to 22.04.2017. He further submitted that as per Govt. of India, Ministry of Defence letter dated 30.05.2011 and 13.06.2011, if an individual is unwilling for further promotion, benefits of MACP will be denied. However, if an individual refuses promotion after grant of MACP, earlier granted MACP to individual will not be withdrawn. In the instant case, applicant has rendered his permanent unwillingness certificate on 15.02.2017, hence, applicant is not eligible for 3rd MACP to the rank of Naib Subedar. 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 only contention of the respondents is that applicant was denied 3rd MACP on the ground that he had submitted an unwillingness certificate, as such he was ineligible for promotion and consequently for benefits accruing from MACPS. 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 certificate rendered for promotion cadre was irrevocable.

8. The moot question which arises for adjudication is whether the applicant had any opportunity for promotion based on vacancies available from due date of promotion till his discharge? We observe that merely because the applicant was in the seniority list for

promotion cadre course he was offered the promotion cadre course w.e.f. 27.02.2017 to 22.04.2017. 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 only 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, age etc. In the reply statement the respondents have not alluded to the vacancy position for the next higher rank, and therefore, it cannot be presumed that a post in the next higher rank was readily available for the applicant had he undergone the promotion cadre course. Therefore, the respondents have not been able to show that an assured vacancy in next higher rank was available for the applicant, and thus his unwillingness to attend promotion cadre course is not tantamount to refusal for promotion. If the applicant had no opportunity for promotion for want of vacancy in the next higher rank, then his claim for MACPS could not be denied only on the basis of the undertaking containing his unwillingness.

9. The applicant was enrolled on 30.12.1993 and was discharged from service on 30.12.2019 in the rank of Havildar, meaning thereby he was entitled to be granted second MACP on completion of 16 years of service which he was granted after due date and was due for third MACP on completion of 24 years of service as on 30.12.2017

which he rendered prior to his discharge from service after completion of terms of engagement.

10. We observe that applicant has been granted only one opportunity to attend promotion cadre course from 27.02.2017 to 22.04.2017 in which applicant submitted his unwillingness for promotion cadre. Thereafter, applicant has not been granted second and third opportunities to attend promotion cadre whereas respondents should have detailed the applicant to undergo promotion cadre course granting all three opportunities before his discharge from service. The only condition that was available that if the applicant had no opportunity for promotion till his retirement, the benefit of MACPS could not be denied to him merely on the basis of first unwillingness certificate rendered by him at the time of his promotion cadre course.

11. As a result of foregoing discussion, the O.A. is **allowed**. The respondents are directed to give due consideration to the claim of the applicant for the benefit of 3rd MACP (Naib Subedar grade) due to him on 30.12.2017 by ignoring the unwillingness certificate given by him at the time of promotion cadre course. The respondents are directed to grant pensionary benefits of the rank of Naib Subedar to the applicant from the next date of discharge from service and issue a Corrigendum PPO accordingly. The Respondents are directed to comply with the order within a period of four months from the date of receipt of certified copy of the order. Default will invite interest @ 8% per annum till actual payment.

12. No order as to costs.

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

(Major General Sanjay Singh) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: 10th February, 2023
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