

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No 107 of 2021**Tuesday, this the 4<sup>th</sup> day of January, 2022**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

No. 15413260-K, Ex Sep (ACP-I) Dhananjay Kumar Singh  
 S/o Sri Binod Kumar Singh  
 R/o Vill – Ghteyan, Post – Auraiyan, Tehsil – Mohaniya,  
 Dist – Kaimpur Bhabua  
 Presently residing at Parasuram Nagar Colony, Manduwa Dih,  
 Rohania, Varanasi (UP) – 221008

..... Applicant

Ld. Counsel for the Applicant: **Shri Parijaat Belaura**, Advocate

Versus

1. The Union of India, through Secretary, Ministry of Defence, New Delhi.
2. Addl Dte Gen of Personnel Service Adjutant General's Branch, Integrated Headquarters, Ministry of Defence (Army), L-1 Block, church Road, New Delhi-01.
3. Officer-in-Charge, Record Office, Army Medical Corps, Pin-900450, C/o 56 APO.
4. The Principal Controller of Defence Account (Pension), Draupadi Ghat, Allahabad (UP).

..... Respondents

Ld. Counsel for the Respondents : **Shri Arvind Kumar Pandey**,  
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) To set aside order dated 11.09.2018.

- (II) To direct to OP no. 3-4 to grant benefit of Ist MACP (NK) w.e.f. 18.07.2009 and IInd MACP (Hav) w.e.f. 18.07.2017 and also pay difference of Salary/payment as applicable.
- (III) To revise the pension of applicant as per IInd MACP (Hav) w.e.f. from 01.08.2018 and issue corrigendum PPO and also pay arrears of difference of pension.
- (IV) To pay 12% interest on arrears w.e.f. it became due till it is actually paid.”

2. The factual matrix on record is that the applicant was enrolled in the Army on 18.07.2001 and was discharged from service w.e.f. 31.07.2018 (AN) in the rank of Naik (TS) on completion of terms of engagement after rendering 17 years and 14 days of service under Rule 13 (3) III (i) of Army Rules, 1954. The applicant was granted MACP Grade-I (Naik Grade) under MACP scheme w.e.f. 18.07.2009 on completion of eight years continuous service. While serving with 428 Field Hospital, the applicant had submitted permanent unwillingness certificate to accept further promotion duly signed by him and countersigned by the Commanding Officer, 428 Field Hospital vide certificate dated 19.03.2016. The applicant voluntarily submitted unwillingness for further promotion, hence, he is not eligible for grant of financial upgradation of MACP II (Hav Grade) under MACP Scheme as per Para 21 of IHQ of MoD (Army) letter dated 13.06.2011. Now the applicant has filed present original application for grant of benefit of MACP-II (Havildar Grade).

3. Learned counsel for the applicant submitted that applicant was enrolled in the Army on 18.07.2001 and was discharged from service w.e.f. 31.07.2018 (AN) in the rank of Sep (ACP-I) after rendering 17

years and 14 days of service. As per Addl Dte Gen Pers Service, New Delhi letter dated 13.06.2011, two financial upgradation shall be given in the entire career and 1st MACP benefit will be granted on completion of 10 years of service. Later, the Govt. has modified to grant three financial upgradation at intervals of 8, 16 and 24 years of regular service. The applicant became entitled for MACP-I w.e.f. 18.07.2009 after completion of 8 years of service and MACP-II on 18.07.2017 after completion of 16 years of service but the applicant was promoted to TS NK only on 01.07.2017.

4. Learned counsel for the applicant further submitted that applicant while posted at 428 Field Hospital applied for Last Tenure Posting (LTP) alongwith many other similarly situated persons on 20.03.2016 which contains unwilling for further extension of service for two years and promotion. On 22.11.2016, a list of personnel who were refused extension of two years of service was published containing the name of applicant and Sep Dilip Kumar, TSLNK Rakesh Kumar Gupta, TSLNK S Jesuraj and TSLNK Vishal Kumar Bajpai. On 22.06.2017, list containing name of applicant as well as Sep Dilip Kumar, TSLNK Rakesh Kumar Gupta, TSLNK S Jesuraj and TSLNK Vishal Kumar Bajpai alongwith 42 persons was published directing them to report Pension Establishment, to be discharged from service w.e.f. 01.08.2017. In the end of release formalities, applicant found that Sep Dilip Kumar, TSLNK Rakesh Kumar Gupta, TSLNK S Jesuraj and TSLNK Vishal Kumar Bajpai, similarly situated persons were issued PPO granting benefit of ACP-II (Havildar Grade) whereas applicant was issued PPO showing his

rank as Sep (ACP-I). The applicant was also eligible and qualified for promotion and never refused for promotion but neither promoted to the rank of Havildar nor given benefit of MACP-II for which he was entitled. It is violation of Article 14 and 16 of the Constitution of India. He pleaded for grant of benefit of MACP-II w.e.f. 18.07.2017 and pensionary benefits to the applicant.

5. Learned counsel for the respondents submitted that applicant was enrolled in the Army on 18.07.2001 and was discharged from service w.e.f. 01.08.2018 (FN) in the rank of Naik (TS) on completion of terms of engagement after rendering 17 years and 14 days of service under Rule 13 (3) III (i) of Army Rules, 1954. The applicant was granted MACP Grade-I (Naik Grade) under MACP scheme w.e.f. 18.07.2009 on completion of eight years continuous service in same grade and Part II Order dated 23.09.2011 to this effect was published. While serving with 428 Field Hospital, the applicant had submitted permanent unwillingness certificate to accept further promotion duly signed by him and countersigned by the Commanding Officer, 428 Field Hospital vide certificate dated 19.03.2016. The applicant voluntarily submitted unwillingness for further promotion, hence, he is not eligible for grant of financial upgradation of MACP II (Hav Grade) under MACP Scheme as per Para 21 of IHQ of MoD (Army) letter dated 13.06.2011 which stipulates that *"If an individual refuses promotion, MACP will also be denied. If an individual refuses promotion after MACP, earlier MACP will not be withdrawn, however, he will not be eligible for further MACP. If he again accepts promotion, MACP will also be deferred by the period of debarment"*

*due to refusal. Willingness for promotion will be assumed unless an individual states he is unwilling.....”.*

6. He further submitted that contention of applicant that TSNK Dilip Kumar, TSNK Rakesh Kumar Gupta, TSNK S Jesuraj and TS NK Vishal Kumar Bajpayee have been granted benefit of MACP-II (Hav Grade) is not justified as their cases are different as they have not submitted unwillingness certificate for promotion rather they were willing to accept their further promotion as and when vacancy exist, accordingly, they have been granted benefit of MACP-II (Hav Grade) as they had submitted unwillingness for extension of service as ***unwilling to extension of service will not affect to grant of MACP to any individuals.*** Hence, they have been granted benefits of MACP-II (Hav Grade).

7. Learned counsel for the respondents further submitted that applicant submitted a personal application dated nil for grant of 2<sup>nd</sup> MACP which was examined and suitably replied by AMC Records vide letter dated 11.09.2018 stating that '*applicant has rendered permanent unwillingness to accept promotion to the next rank, hence he is not eligible for MACP II (Hav Grade)*'. He also said that 'if an individual refuses promotion, MACP will also be denied'. Since, the applicant had given permanent unwillingness for further promotion, he is not eligible for grant of benefit of MACP-II (Havildar Grade) as per policy on the subject. He pleaded for dismissal of O.A.

8. We have heard learned counsel for the respondents and have perused the record.

9. We find that applicant has rendered his unwillingness for further promotion in writing which debarred him from further promotion to get the benefit of MACP-II (Havildar Grade) as per Govt. policy letters dated 13.06.2011 and 11.07.2018. Hence, we are of the view that claim of applicant for grant of benefit of MACP-II (Havildar Grade) without fulfilling the conditions as required as per MACP policy, is not sustainable and has rightly been rejected by the respondents which need no interference.

10. In view of above, O.A. has no merit, deserves to be dismissed and is accordingly **dismissed**.

11. No order as to costs.

	<b>(Vice Admiral Abhay Raghunath Karve)</b>	<b>(Justice Umesh Chandra Srivastava)</b>
	<b>Member (A)</b>	<b>Member (J)</b>
Dated:	January, 2022	
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