

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No 153 of 2021**Wednesday, this the 12<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. 4199348-H Ex Sep (ACP-1) Yashbir Singh Yadav  
of 11 KUMAON, C/o 56 APO  
S/o Shri Jai Bhagwan  
R/o Village – Luhara,  
Post Office – Aminagar Sarai,  
Tehsil – Baghpat, District – Baghpat (UP) – 250606

..... Applicant

Ld. Counsel for the Applicant: **Shri KKS Bisht**, Advocate

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence (Army), South Block, New Delhi-110011.
3. Officer-in-Charge Records, The Kumaon Regiment, PIN – 900473, C/o 56 APO.
4. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Prayagraj-211014.

..... Respondents

Ld. Counsel for the Respondents : **Shri R.C. Shukla**,  
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 second financial up-gradation under Modified

Assured Career Progression (MACP) Scheme from the date of completion of 16 years service i.e. from 15.07.2019 and enhanced pension from the date of discharge i.e. 31.07.2020 alongwith arrears.

- (b) Issue/pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.
- (c) Allow this application with costs."

2. Rejoinder affidavit filed by the applicant is taken on record.

3. The factual matrix on record is that the applicant was enrolled in the Army on 15.07.2003 and was discharged from service w.e.f. 31.07.2020 (AN) in the rank of Naik (ACP-1) on completion of terms of engagement after rendering 17 years and 17 days of service under Rule 13 (3) III (i) of Army Rules, 1954. The applicant was granted ACP-1 (ACP Naik) on 15.07.2011 but he was arbitrarily and illegally not considered for grant of ACP-II (ACP Havildar) which was due on 15.07.2019. Since the applicant has served for more than 17 years of service, he is eligible for grant of MACP-II after completion of 16 years of service. The applicant submitted unwillingness for promotion cadre and further promotion, hence, he was not considered 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).

4. Learned counsel for the applicant submitted that applicant was enrolled in the Army on 15.07.2003 and was discharged from service w.e.f. 31.07.2020 (AN) after rendering 17 years and 17 days of

service under Rule 13 (3) III (i) of Army Rules, 1954. As per Addl Dte Gen Pers Service, New Delhi letter dated 29.09.2003, two financial upgradation shall be given in the entire career and 1st ACP benefit will be granted on completion of 10 years of service and second after completion of 20 years of service. Later, the Govt. vide its letter dated 13.06.2011 has modified to grant three financial upgradation at intervals of 8, 16 and 24 years of regular service.

5. Learned counsel for the applicant further submitted that applicant was granted ACP-1 (ACP Naik) on 15.07.2011 but he was arbitrarily and illegally not considered for grant of ACP-II (ACP Havildar) which was due on 15.07.2019. Since the applicant has served for more than 17 years of service, he is eligible for grant of MACP-II after completion of 16 years of service as held by the Hon'ble Apex Court in the case of ***Union of India & Others vs. Balbir Singh Turn & Another***, decided on 08.12.2017. The applicant preferred an application to the Records for grant of ACP-II (Havildar Grade) on 12.10.2020 but it has not been decided by the competent authorities. The applicant is eligible for benefit of MACP-II (Havildar Grade) as per Govt. of India letter dated 13.06.2011. He pleaded for grant of benefit of MACP-II w.e.f. 15.07.2019 and pensionary benefits to the applicant.

6. Learned counsel for the respondents submitted that applicant was enrolled in the Army on 15.07.2003 and was discharged from service w.e.f. 31.07.2020 (AN) in the rank of Naik (ACP-1) on completion of terms of engagement after rendering 17 years and 17 days of service under Rule 13 (3) III (i) of Army Rules, 1954. During

final settlement of account of the applicant it was found that applicant was eligible for grant of MACP-II (Havildar Grade) w.e.f. 15.07.2019, however, it came to light that applicant was unwilling for promotion cadre and promotion and had accordingly forwarded Unwillingness certificate while serving with 11 KUMAON.

7. Learned counsel for the respondents further submitted that as per Addl Dte Gen Pers Service, New Delhi letter dated 13.06.2011, two financial upgradation shall be given in the entire career; 1st ACP benefit will be granted on completion of 10 years of service and second after completion of 20 years of service. Later, Modified Assured Career progression (MACP) Scheme was introduced to grant three financial upgradation at intervals of 8, 16 and 24 years of regular service vide Govt. of India, Ministry of Defence letter dated 30.05.2011 which was made operational w.e.f. 01.09.2008 and later on as per judgment of the Hon'ble Apex Court judgment in Civil Appeal Diary No. 3744/2016, **Union of India & Ors vs. Shri Balbir Singh Turn & Another**, Govt. of India extended the benefit of MACP w.e.f 01.01.2006. The applicant submitted unwillingness for promotion cadre and 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.....”.*

8. Learned counsel for the respondents further submitted 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.

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

10. The Hon’ble Apex Court in Civil Appeal No. 7027-7028 of 2009, **Union of India & Others vs. Manju Arora & Another**, decided on 03.01.2022 has held that once a petitioner has given his/her unwillingness for or refused promotion, he/she is not entitled for financial upgradation and therefore, forfeits the right of ACP also.

11. 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 para 21 of MACP policy letter dated 13.06.2011 and in view of judgment of the Hon’ble Apex Court in **Manju Arora** (supra), is not sustainable and has rightly been rejected by the respondents which need no interference.

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

13. No order as to costs.

14. Pending Misc. Application(s), if any, shall be treated to have been disposed off.

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

Dated: January, 2022

SB