

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No 603 of 2021**

Wednesday, this the 19th day of January, 2022

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

No. 13961350-Y Ex Hav/Amb. Asst, Mahendra Kumar Jena
 R/o House No. 592 Jha/170, Rathindra Nagar, Telibagh,
 Lucknow (UP) – 226029

..... Applicant

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

Versus

1. 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, AMC Records, 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 Shyam Singh**,
 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:-

- “(I) To set aside the impugned order dated 20.05.2021 passed by opposite party no. 3 (Anx-1).
- (II) To direct to OP no. 3-4 to grant 3rd MACP (Nb/Sub) w.e.f. 01.02.2006 after giving the benefit of Para 18(a) of Pension Regulations for the Army Part-1 (2008).

(III) To pay difference of pension of Nb/Sub from 01.02.2009 till it is actually paid with 12% interest.”

2. The factual matrix on record is that the applicant was enrolled in the Army on 16.01.1985 and was discharged from service on 31.01.2009 (AN) under the provisions of Rule 13 (3) III (i) of Army Rules, 1954 after rendering 24 years of service (including 47 days NQS). The applicant represented his case for grant of 3rd MACP (Nb Sub) to AMC Records vide letter dated 12.05.2021 which was rejected vide impugned letter dated 20.05.2021 on the ground that there is 47 days non qualifying service (short fall of 32 days qualifying service in 24 years as applicant has served 23 years 10 months and 28 days of qualifying service. Being aggrieved, the applicant has filed present original application.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Army on 16.01.1985 and was discharged from service on 31.01.2009 in the rank of Havildar after rendering 24 years and 15 days of service. Accordingly, he is in receipt of full service pension for the rank of Havildar. As per 6th CPC, MACP scheme is applicable for grant of three financial upgradations at intervals of 8, 16 and 24 years of continuous service vide IHQ of MoD (Army) letter dated 30.05.2011 and is effective w.e.f. 01.01.2006. The applicant after rendering 24 years and 15 days of service in the rank of Havildar is entitled for the benefit of MACP-III. The applicant overstayed leave to look after his wife who was serious during the time of pregnancy/delivery. Though, the applicant requested to his unit to grant/extend leave but the same was no done. The applicant

represented his case for grant of 3rd MACP (Nb Sub) to AMC Records vide letter dated 12.05.2021 which was rejected vide impugned letter dated 20.05.2021 on the ground that there is 47 days non qualifying service (short fall of 32 days qualifying service in 24 years as applicant has served 23 years 10 months and 28 days of qualifying service.

4. Learned counsel for the applicant further submitted that applicant was not paid pay and allowances for the period of 47 days absence, hence, period of 47 days NQS should be condoned under the provisions of para 18(a) and 49 of Pension Regulations for the Army Part-1 (2008) and period of absence to be added in his service treating his total service 24 years as rendered by him. Denial of benefit of 3rd MACP saying short of 32 days NQS would tantamount to a double jeopardy as he was not paid pay and allowed for the period which is violation of Article 20 of the Constitution of India. He placed reliance on the judgment of AFT (RB), Chennai in O.A. No. 108 of 2016, **Ex Hav M Sankarraj vs. Union of India & Ors**, decided on 23.11.2017 and AFT (RB) Lucknow judgment in O.A. No. 212 of 2021 **Ex Hav Kiranvir Singh vs. Union of India & Ors**, decided on 06.12.2021 and pleaded that applicant's case is similar in nature, therefore, he is also eligible for grant of 3rd MCAP (Nb Sub Grade).

5. Learned counsel for the respondents submitted that applicant was enrolled in the Army on 16.01.1985 and was discharged from service on 31.01.2009 (AN) under the provisions of Rule 13 (3) III (i) of Army Rules, 1954 after rendering 23 years, 10 months and 29 days of service (excluding 47 days NQS). He was granted service

pension in the rank of Havildar vide PPO dated 28.01.2009. The applicant preferred an application dated 12.05.2021 to AMC Records for grant of 3rd MACP. Accordingly, AMC Records vide letter dated 20.05.2021 replied that *“You were promoted to the rank of Naik on 24 Jul 2000. On completion of 20 years qualifying service, ACP-II (Hav Grade) granted you on 05 Mar 2005 while in service. You are not eligible for MACP-III (Nb Sub Grade) as you did not serve 24 years qualifying service due to 47 days NQS (Overstaying leave 10 May 1996 to 04 Jul 1996) as per existing policy of MACP”*.

6. Learned counsel for the respondents further 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 which was later on made effective w.e.f. 01.01.2006 by the judgment of the Hon'ble Apex Court. As per Govt. of India, Ministry of Defence letter dated 30.05.2011 as amended vide Govt. of India, Ministry of Defence letter dated 25.07.2018, MACP-III is granted to those who have either completed eight years of service in the rank of Havildar or have completed 24 years of qualifying service. Since the applicant at the time of discharge from service neither completed 8 years of service in the rank of Havildar nor completed 24 years of qualifying service, he is not entitled for grant of MCP-III as per existing policy.

7. Learned counsel for the respondents also submitted that Para 21 and Para 122 (a) (iii) of Pension Regulations for the Army Part-1 (2008) and stipulated that any period of unauthorised absence unless pay and allowances are admitted for the period of absence shall not qualify for pension or gratuity. In this instance case, the pay and

allowances for the period w.e.f. 19.05.19096 to 04.07.1996 being unauthorised period of absence was not regularised and pay and allowances were not paid to him for the period of absence. The same was forfeited being unauthorised absence and was counted as Non Qualifying Service (NQS). He also submitted that there is no provision for condonation of service for grant of MACP. He pleaded for dismissal of O.A.

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

9. We find that MACP scheme is effective w.e.f. 01.01.2006 for grant of three financial upgradations at intervals of 8, 16 and 24 years of service. In the present case, applicant was discharged from service in the rank of Havildar on completion of terms of engagement of service after rendering 24 years and 16 days of service in which there was NQS of 47 days on account of overstaying of leave for which applicant was not paid pay and allowances for the period of 47 days absence.

10. So far as prayer of the applicant for condonation of short fall of 31 days in order to become eligible to get MACP-III benefit after rendering 24 years of service is concerned, the Court, keeping in view the provisions of para 18 of Pension Regulations for the Army, Part-1 (2008) for calculating qualifying service are equally applicable for grant of MACP, we find no impediment in computing his qualifying service as 24 years for the said purpose of granting 3rd MACP (Nb Sub Grade), as well. Hence, as per provisions of para 18 of Pension Regulations for the Army, Part-1 (2008), IHQ of MoD (Army) letters

No. B/33513/ACP/AG/PS-2(c) dated 13 June 2011 and even No. dated 03.06.2016, we are of the view to condone shortfall of 31 days NQS. The applicant's total qualifying service as per respondents is 23 years, 10 months and 29 days, hence, 31 days NQS is condoned and the applicant is held entitled to get the benefit of MACP-III on the date he has completed 24 years of service, i.e. 16.01.2009.

11. In the result, Original Application is allowed. The impugned order passed by the respondents is set aside. The respondents are directed to consider the claim of the applicant for grant of notional promotion to the rank of Naib Subedar giving the benefit of MACP-III (Naib Subedar grade) from the date of discharge from service with all consequential/ pensionary benefits of the rank of Naib Subedar 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 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
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