

(Court No 2)

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**

**ORIGINAL APPLICATION No. 494 of 2024**

Monday, this the 06<sup>th</sup> day of January, 2025

**“Hon’ble Mr. Justice Anil Kumar, Member (J)  
Hon’ble Lt Gen Anil Puri, Member (A)”**

No. 15200489A Ex Sep Rahul Kumar, S/o late Rajendra Singh, resident of Vill-Ranchhar, P.O.-Ranchhar, District-Baghat, Pin-250611 (UK).

..... Applicant

Ld. Counsel for the : **Shri KP Datta**, Advocate.  
Applicants

Versus

1. Union of India, through Secretary, Min of Defence, New Delhi-110011.
2. The Chief of Army Staff, IHQ of MoD (Army), South Block, New Delhi-110001.
3. Officer-in-Charge, Artillery Records Office, Nasik Road Camp, PIN-900482, C/o 56 APO.
4. O/o PAO (OR) Artillery, Nasik Road Camp, PIN-900482, C/o 56 APO.
5. O/o PCDA (Pension), Draupadighat, Allahabad-211014.

.....Respondents

Ld. Counsel for the  
Respondents.

:**Ms Anju Singh**, Advocate  
Central Govt. Counsel

## ORDER

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

- (a) *To pass an order to refix/revise pay in Pay Matrix from due date as per 7<sup>th</sup> CPC awards and MACP Scheme, switching over to 7<sup>th</sup> CPC awards.*
- (b) *To pass an order to grant 2<sup>nd</sup> Financial Upgradation to the rank of MACP Havildar w.e.f. 04.01.2019 (pay level-5) for Rs 39,200/- p.m. on implementation of 6<sup>th</sup> and 7<sup>th</sup> CPC awards and MACP Scheme, and in light of order passed in similar cases by the Hon'ble Tribunals.*
- (c) *To pass an order to issue Corrigendum PPO after revised Pay Matrix, pensionary and post retiral benefits.*
- (d) *To pass an order to grant arrears accrued after revision of Pay in Pay Matrix from due date, then enhanced service pension with interest on arrears from date of discharge w.e.f. 31.01.2020.*
- (e) *To pass any other order or direction as may deem just, fit and proper under the circumstances of the case in his favour.*

2. Brief facts of the case are that the applicant was enrolled in the Army on 04.01.2003 and discharged from service w.e.f. 31.01.2020 (AN) under Rule 13 (3) III (i) of the Army Rules, 1954 on fulfilling the terms of engagement. He rendered 17 years and 28 days service in the Army for which he is in receipt of service pension vide PCDA (P), Prayagraj PPO No. 153202003017 dated 27.02.2020. During the course of his service, he became eligible for grant of benefits of 1<sup>st</sup> MACP (Naik grade) w.e.f. 04.01.2011 after completion of eight years service in the rank of Sepoy for which Part-II Order was

notified. He was due for 2<sup>nd</sup> MACP w.e.f. 04.01.2019 after continuous service of eight years from the next date he was granted 1<sup>st</sup> MACP, but since he submitted unwillingness certificate dated 24.04.2018 (Annexure CA-3) for further promotion, he was denied grant of 2<sup>nd</sup> MACP. After discharge from service, the applicant submitted application dated 11.09.2023 for grant of MACP Naik (1<sup>st</sup> MACP) w.e.f. 04.01.2011 and MACP Havildar (2<sup>nd</sup> MACP) w.e.f. 04.01.2019 which was processed by Artillery Records vide letter dated 17.01.2024 and his service pension was revised w.e.f. 01.02.2020 after granting 1<sup>st</sup> MACP and Corrigendum PPO No. 232202006135 was issued. As far as grant of 2<sup>nd</sup> MACP to the applicant is concerned, respondents have submitted that the applicant is not entitled to 2<sup>nd</sup> MACP as he had submitted unwillingness certificate dated 24.04.2018 for promotion to next higher rank which made him ineligible for grant of 2<sup>nd</sup> MACP. Applicant has filed this O.A. for grant of 2<sup>nd</sup> MACP on the ground that various benches of the Armed Forces Tribunal have allowed grant of 2<sup>nd</sup> MACP on the same ground.

3. Submission of learned counsel for the applicant is that the applicant is entitled for grant of 2<sup>nd</sup> MACP after completion of 16 years service in terms of policy letters on the subject issued from time to time for grant of MACPs. Further submission of learned counsel for the applicant is that the respondents have denied grant of 2<sup>nd</sup> MACP even after

submitting his grievance dated 11.09.2023 to the Officer-in-Charge, Records which is not justified. His contention is that the three financial upgradations are based on length of service rendered i.e. 1<sup>st</sup> MACP on completion of 08 years service, 2<sup>nd</sup> MACP on completion of 16 years service and continuously remaining in 1<sup>st</sup> MACP grade pay for 08 years and 3<sup>rd</sup> MACP on completion of 24 years service and continuously remaining in 2<sup>nd</sup> MACP grade pay for 08 years preceding to date becoming eligible for grant of the above financial upgradations. In support of his submission for grant of 2<sup>nd</sup> MACP, the applicant has relied upon order dated 10.12.2014 passed by AFT (PB), New Delhi in O.A. No 113 of 2014, **Sub Chittar Singh vs UOI & Ors** and orders passed by this Tribunal in O.A. No. 428 of 2022, **ACP Nb Sub Dhirendra Singh vs UOI & Ors**, O.A. No. 425 of 2022, **Ex ACP Nb Sub Bhola Shankare Sharma**, O.A. No. 155 of 2023, **Ex ACP Nb Sub Pramod Singh Yadav vs UOI & Ors**, O.A. No. 842 of 2022, **Surendra Kumar Yadav vs UOI & Ors** and O.A. No. 115 of 2023, **Ex ACP Nb Sub Nagendra Kumar Singh vs UOI & Ors**.

6. Per contra, learned counsel for the respondents submitted that the applicant was enrolled in the Army with terms of engagement of 17 years colour and 02 years as

reserve. He further submitted that the applicant was granted 1<sup>st</sup> MACP on due date on completion of 08 years service. His further submission is that consequent to giving his unwillingness certificate for further promotion he became ineligible for grant of 2<sup>nd</sup> MACP and that is the reason he was denied benefit of 2<sup>nd</sup> MACP in terms of policy on the subject. He pleaded for dismissal of O.A.

7. Heard Shri KP Datta, learned counsel for the applicant and Ms Anju Singh, learned counsel for the respondents and perused the record.

8. Grievance of the applicant is that he was denied 2<sup>nd</sup> MACP even after he completed 16 years colour service. In this regard, a reference was made by learned counsel for the applicant that based on orders passed by various benches of the Armed Forces Tribunal, applicant is also entitled for grant of 2<sup>nd</sup> MACP.

9. The Govt of India, Min of Defence had introduced Assured Career Progression Scheme (ACP) for grant of two financial upgradations in the interval of 10 and 20 years continuous service in same grade pay and subject to fulfilling the other eligibility conditions. The above scheme was further revised after 6<sup>th</sup> CPC to Modified Assured Career Progression

Scheme (MACP) for grant of three financial upgradations at intervals of 8, 16 and 24 years of continuous service subject to fulfilling the other eligibility conditions. Accordingly, the applicant was granted 1<sup>st</sup> financial upgradation under MACP Scheme on completion of 08 years continuous service and on fulfilling other criteria.

10. It is observed that the applicant was granted 1<sup>st</sup> financial upgradation under MACP Scheme w.e.f. 04.01.2011 after completion of eight years continuous service in the rank of Sepoy. He was due for 2<sup>nd</sup> financial upgradation under MACP Scheme w.e.f. 04.01.2019 which was denied as he had submitted unwillingness certificate for further promotion. Respondent's contention is that after rendering unwillingness certificate, the applicant became ineligible for grant of 2<sup>nd</sup> MACP in terms of Para 21 of policy letter dated 13.06.2011. On perusal, we find that Para 21 prohibits further financial upgradation under MACP Scheme on rendering unwillingness certificate for further promotion. For convenience sake the aforesaid Para is reproduced as under:-

*“21. Effect of Refusal of Promotion. If an indl refuses promotion, MACP will also be denied. If an indl 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 indl states he is unwilling.*

11. We have perused the certificate given by the applicant. He has rendered certificate for unwillingness for promotion certifying that he was unwilling for further promotion and wished to retire from service in his present rank on completion of service limits. The applicant has further certified that his option was irreversible which will make him not eligible for promotion any time in future service and he had no objection, if he is superseded by his juniors for promotion. Hence, the applicant is not eligible for grant of second financial upgradation as he himself had rendered unwillingness certificate for further promotion. For convenience sake, extract of certificate dated 24.04.2018 rendered by the applicant is reproduced as under:-

“UNWILLINGNESS CERTIFICATE FOR FURTHER  
PROMOTION AGAINST COMMON  
SENIORITY OF REGT OF ARTY”

1. I, No 15200489A Rank LNK (GD) Name Rahul Kumar of 23 Fd Regt (Unit) am unwilling for further promotion to the rank of Nk/Hav/Nb-Sub/Sub and have no objection in case any junior is promoted to higher rank against my vacancy.

2. I further declare that I am well aware of the implication of submitting unwillingness for further promotion and will also not request for withdrawal of my present unwillingness certificate at a later stage under any circumstances. I have no objection if my name is permanently withdrawn from the common seniority of Regt of Arty as I will retire from service on completion of my present terms of engagement.”

12. O.A. No. 728 of 2020, **Chanchal Singh vs UOI & Ors** was referred by AFT (RB), Chandigarh to the Hon’ble Chairperson, AFT

(PB), New Delhi. By order dated 01.11.2023 of the Hon'ble Chairperson, Larger Bench was constituted to decide the following controversy:-

*“Whether financial upgradation is to be given after 08, 16 and 24 years of service to break the stagnation or any other conditions like unwillingness to go for promotion cases, involving inefficiency, grant of red ink entries and disciplinary proceedings are also to be looked into, at the stage”*

13. The subject controversy has been decided by the Larger Bench by order dated 30.05.2024 keeping in view of various pronouncements of the Hon'ble Supreme Court and also in view of recent judgment dated 03.01.2022 passed in the case of **Union of India vs Manju Aarora & Anr**, (2022) 1JT 65. Para 28 to 30 of Larger Bench order dated 30.05.2024 being relevant are reproduced as under:-

*“28. In view of the above, the facts are clear that MACP Scheme was made effective w.e.f. 01.09.2008 as per Government of India resolution and MACP not being part of pay and DA, the Government notified it on different dates for implementation and in the case of MACP Scheme, it was decided to be given w.e.f. 01.09.2008. It was also made clear by Government of India, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) that Cadre Controlling Authority was to lay down guidelines and criteria for grant of financial up-gradation as per MACP Scheme. Further, it was clarified that passing of cadre test was an essential part for promotion and if any individual refused to undergo cadre test for promotion or unwillingness for promotion, he should not be entitled to MACP Scheme because MACP Scheme was for individuals who are victims of long stagnation in service and they were held entitled to financial up-gradation after a lapse of 8, 16 and 24 years of service. Similarly, disciplinary proceedings were essential to be looked into while passing order for grant of promotion and if an individual is held not entitled to promotion because of disciplinary proceedings, he was refused financial upgradation because of disciplinary proceedings against him as approved by Screening Committee duly notified as per Government of India policy.*

*29. In the light of the above, we decide the controversy that financial upgradation is to be given after 8, 16 and 24 years of service to break stagnation but if an individual gives unwillingness to undergo promotion cadre test or unwillingness for promotion or he is involved in any disciplinary proceedings or case involving inefficiency those are to be looked at separately by the competent authority and they were not entitled to financial up-gradation as per scheme of MACP.*

*30. Resultantly, the present reference is decided against the applicant to the extent that if financial up-gradation is to be given after 8,*



*16 and 24 years to break stagnation but if an individual refuses promotion or to undergo promotion cadre test, his case shall not be considered as financial stagnation for grant of MACP purpose and his case is to be dealt with separately. Similarly, cases involving red ink entries and disciplinary proceedings are also looked into separately as per law/rules. Pending Miscellaneous Application (s), if any, shall also stand disposed of”*

14. In view of the above, it is clear that while tendering his unwillingness, he accepted that he is foregoing further promotion which also debars grant of financial upgradation under MACP Scheme. That being the position, the applicant having decided to give up his right for promotion by tendering his unwillingness, is also not entitled to the benefit of 2<sup>nd</sup> MACP.

15. Accordingly, the O.A. is **dismissed** with no order as to costs.

16. Miscellaneous application(s), pending if any, stand disposed of.

**(Lt Gen Anil Puri)**  
**Member (A)**

Dated : 06.01.2025

*rathore*

**(Justice Anil Kumar)**  
**Member (J)**