

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW  
(CIRCUIT BENCH, NAINITAL)**

**Original Application No 178 of 2021**

Monday, this the 15<sup>th</sup> day of November, 2021

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

4178387N Ex Hav Sher Singh  
S/o Bahadur Singh, R/o Village Post – Dungatoli  
Tehsil – Charchula, District – Pithoragarh

..... Applicant

Ld. Counsel for the Applicant: **Shri Kishore Rai**, Advocate

Versus

1. Union of India, Ministry of Defence through its Secretary, South Block, New Delhi-110011.
2. P.C.D.A. (P) Allahabad, Uttar Pradesh.
3. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence (Army), South Block, New Delhi – 110011.
4. Senior Record Officer, Records The Kumaon Regiment, Ranikhet, District – Almora, C/o 56 APO.

..... Respondents

Ld. Counsel for the Respondents : **Shri Rajesh Sharma**,  
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. A direction to the respondents to grant the benefits of 1<sup>st</sup> Modified Assured Career Progression Scheme on completion of 8 years of service on 01.09.1991 and Second Modified Assured Career Progression Scheme on completion of 16 years of service on 01.09.1999 and benefits of 3<sup>rd</sup> Modified Assured Career Progression Scheme on the post of Nb Sub (Naib Subedar) on

completion of 24 years of service in the year 2007 after completion of 24 years of service w.e.f. 01.01.2006 with all consequential benefit of Naib Subedar grade.

- ii. To summon the entire records of the applicant pertaining to computation of the benefits to the applicant under Modified Assured Career Progression Scheme.
- iii. Any other relief to which the applicant is found entitled may also very kindly be granted to the applicant.”

2. The factual matrix on record is that the applicant was enrolled in the Army on 01.09.1983 and was discharged from service on 31.08.2007 under Rule 13 (3) III (i) of Army Rules, 1954 on fulfilling the completion of terms of engagement after rendering 24 years of service. Grievance of the applicant is that he has been denied benefit of Modified Assured Career Progression Scheme (MACP) of Nb Sub grade. The applicant submitted an application dated 21.07.2019 which was not replied by the respondents. The applicant again submitted letters dated 31.08.2019 and 22.10.2019 to the respondents to consider for grant of MACP benefit but no reply received from the respondents. Being aggrieved, the applicant has filed present original application.

3. Learned counsel for the applicant submitted that MACP is applicable w.e.f. 01.01.2006, hence on completion of 24 years of service, i.e. on 31.08.2007, applicant is eligible for MCAP-III (Nb Sub Grade) and he should be granted benefit accordingly. He placed reliance on judgment of Armed Forces Tribunal, Regional Bench, Kochi passed in O.A. No. 103 of 2011: ***Ex Havildar Abraham. C.U. and others vs. Union of India and others***, decided on 17.07.2013

and the Hon'ble Apex Court judgment in the case of ***Union of India and Ors vs. Balbir Singh Turn & Anr*** in Civil Appeal Diary No. 3744 of 2016, decided on 08.12.2017 in which the Hon'ble Court has held in Para 11 that :-

“We are only concerned with the interpretation of the Resolution of the Government which clearly states that the recommendations of 6<sup>th</sup> CPC as modified and accepted by the Central Government is so far as they relate to pay structure, pay scales, grade pay etc. will apply from 01/01/2006. There may be some gainers and some losers but the intention of the Government was clear that this scheme which is part of the pay structure would apply from 01/01/2006. We may also point out that the Resolution dated 30.08.2008 whereby the recommendation of the Pay Commission has been accepted with modification and recommendations with regard to pay structure, pay scale, grade pay etc. have been made applicable from 01.01.2006. This is a decision of the Cabinet. This decision could not have been modified by flies in the face of the Cabinet decision reflected in the Resolution dated 30.11.2008. Thus, administrative instruction dated 30.05.2011 is totally ultra virus the Resolution of the Government.”

4. Learned counsel for the respondents submitted that applicant was discharged from service on 31.08.2007 (AN) after rendering 23 years, 11 months and 30 days of service and is in receipt of service pension in the rank of Havildar vide PPO dated 03.08.2007. As per Appendix 'A' to IHQ of MoD (Army) letter dated 13.06.2011 and 20.06.2011, *“if an individual enrolled on 1<sup>st</sup> of a month, he will retire on last day of the previous month. Similarly if an individual is enrolled on last day of the month, he will be retired the same day. In both the above eventualities, a Havildar will retire before completion 24 years of service and hence will not be eligible for grant of MACP”*. Hence, applicant is also not entitled for grant of MACP of Naib Subedar grade due to policy constraint. .

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

6. In a similar case, Armed Forces Tribunal, Regional Bench, Kochi passed a judgment in O.A. No. 103 of 2011: ***Ex Havildar Abraham. C.U. and others vs. Union of India and others***, decided on 17.07.2013 whereby the Tribunal has directed the scheme to be implemented from 01.01.2006. The relevant portion of observations made by the Armed Forces Tribunal, Kochi Bench, needs reproduction, and is reproduced as under:

*“9. So far as the claim of the applicants for the benefit of the Assured Career Progression Scheme introduced by the respondent by the letter dated 3.8.2003 (Annexure A2) is concerned, it has no substance. The Government, keeping in view the recommendations of the 5th Central Pay Commission decided to grant the benefit to only those persons who held the rank of Sepoy. The benefit was not extended to any other rank of the Army including direct entry Havildars. There could not be any claim for parity or equality with Sepoy, as the Havildar being superior in rank could not be said to be at par with Sepoy, as such, both the Sepoy and Havildar were two different and distinct classes, therefore, there was no violation of the provisions of Articles 14 and 16 of the Constitution of India, in restricting the benefit of Assured Career Progression Scheme to the cadre of Sepoy only. So far as the benefit of the MACPS as introduced by the respondent No.1 vide letter dated 30th May, 2011 (Annexure A5) is concerned, it was made available not only to Sepoy but also other ranks falling with the category of PBORs, including direct entry Havildars. The introduction of MACPS was made according to the recommendations made by the 6th Central Pay Commission in para 2.3.34, which may be reproduced as follows:*

*“2.3.34 Presently PBORs in Defence Forces are eligible for two time bound upgradations on completion of 10 and 20 years of service. The Defence Forces have demanded reduction of period for time bound upgradations to 8 and 12 years. Other suggestions have also been made regarding residency periods for promotion of PBORs. The Commission notes that under the Scheme of Assured Career Progression (ACPS) for civilians, the upgradations are given on completion of 12 and 24 years of service. Demands for reduction of the residency period in case of civilians were also received. However, the Commission has been unable to accept this demand keeping in view the revised scheme of running pay bands and annual increments as a percentage of pay. In such a scenario, any reduction in the prescribed residency period under ACPS for Defence Forces personnel would not be justified especially when the residency period requirements in their*

*case are already lower than in the case of civilian employees. Accordingly, the residency periods for time bound upgradations for PBORs shall remain unchanged. Under the Modified Assured Career Progression now being proposed for the civilians, financial upgradations will entail one increment without any change in the grade pay. In consonance with the scheme of the Report to ensure parity between civilians and Defence Forces, a similar dispensation needs to be extended in case of the latter. The Commission, therefore, recommends that the time bound promotion scheme in case of PBORs shall allow two financial upgradations on completion of 10 and 20 years of service as at present. The financial upgradations under the scheme shall allow benefit of pay fixation equal to one increment along with the higher grade pay. As regards the other suggestions relating to residency period for promotion of PBORs, Ministry of Defence may set up an Inter Services Committee to consider the matter after the revised scheme of running pay bands is implemented.”*

*Accordingly, the Commission recommended that time bound promotion scheme in the case of PBORs shall allow two financial upgradation on completion of 10 and 20 years of service, and the upgradation shall be provided by way of pay fixation equal to one increment along with higher grade pay in the concerned pay band. It appears that the Government accepted the recommendation of the 6th Central Pay Commission with further liberalisation to the effect that upgradation was made applicable three times. The first upgradation on completion of 8 years of service, second upgradation on completion of 16 years of service and third upgradation on completion of 24 years of service. Most of the recommendations of the 6th Central Pay Commission regarding pay and allowances were made effective from 1.1.2006. Therefore, the intention behind the introduction of Modified Assured Career Progression Scheme was to provide the benefit of the said scheme with effect from the said date. But, it appears that the Government was to constitute a Committee, therefore, the delay occurred in bringing out the scheme into operation. Accordingly, the Government ultimately issued the letter, Annexure A5, but we fail to understand as to what prompted respondent No.1 to implement MACPS only with effect from 1st September, 2008. We do not find any reason as to why the scheme was not introduced with effect from 1.1.2006, especially when the recommendations of the 6th Central Pay Commission with regard to pay etc. were implemented by the respondent No.1 with effect from 1.1.2006. The policy to introduce MACPS with effect from 1.9.2008 instead of 1.1.2006 has resulted in depriving the benefits to direct entry Havildars and other PBORs, who were in service on 1.1.2006 and retired before 1st September, 2008, and had the eligibility to get the benefit of the Scheme. Sepoys had been granted the benefit of the old scheme of ACP in the year 2003 and were even allowed to avail the benefit of the same scheme from 1.1.2006 to 31.8.2008. So, they were not, in any way, in a disadvantageous position due to the delayed implementation of the MACPS, but it affected all those who had no benefit of ACP, as*

*introduced by the 5th Central Pay Commission and became entitled to MACPS as per the recommendations of the 6th Central Pay Commission and retired prior to 1.9.2008. Article 14 of the Constitution of India ensure to all equality before the law and equal protection of the laws. The equality clause so provided in the Constitution can be made subject to a valid classification, based on a just objective. The result to be achieved by the just objective pre-supposes, the choice of some differential treatment over others. To put it otherwise, the test for a valid classification may be summarised as a distinction based on a classification founded on an intelligible differentia, which has a rational relationship with the object sought to be achieved. Whenever a cut off date is fixed to categorise one set of persons for favourable consideration over others, twin test for classification, namely the distinguishing rationale based on a just objective and the choice of differentiating one set of person from another having a reasonable nexus to the objective sought to be achieved, must necessarily be satisfied. Learned counsel for the applicant submitted that there was no justification to enforce MACPS from 1.9.2008 instead of 11.2006 by depriving those who retired after 1.1.2006 but before 1.9.2008. According to the learned counsel, there was no rationale behind the classification nor it had any nexus to the object sought to be achieved by making the classification. He next tried to contend that there could be a financial reason for keeping the MACPS scheme in abeyance from 1.1.2006 to 31.8.2008. But, it was not a valid reason to deny the benefits with effect from 1.1.2006 especially when most of the benefits extended by the 6th Central Pay Commission have been extended with effect from that date. Prescription of pay scales, OA No.103 of 2010 - 11 - schemes for promotion including time bound scale such as ACP, MACPS, is a very complex exercise to be done by expert bodies like the Pay Commission, employer etc. and cannot be taken by any Courts or Tribunals on their own, due to the simple reason that they lack necessary expertise to undertake the issue. In this view of the matter, we have no option except to remit the matter to respondent No.1 to give due consideration to the view points of the applicants and take appropriate decision thereon keeping in view the recommendations and the objects behind the recommendations of the 6th Central Pay Commission and the imports of Articles 14 and 16 of the Constitution of India. In our view, it will also be just and expedient to provide an opportunity to the applicants to give a detailed representation/ representations to the respondent No.1, justifying the claim for implementation of the Modified Assured Career Progression Scheme with effect from 1.1.2006, which shall be given preferably within one month from today."*

7. The case of the applicant is squarely covered by the decision of the Armed Forces Tribunal, Regional Bench Kochi (supra), hence, applicant will also be eligible for MACP benefit applicable from 01.01.2006. Since the applicant was enrolled on 01.09.1983 and

discharged from service on 31.08.2007 (AN) as per Govt. policy, therefore, contention of the respondents that applicant has rendered 23 years, 11 months and 30 days service and retired before completion of 24 years of service and will not be eligible for grant of MACP is not sustainable as applicant has been retired from service on the day he was completing 24 years of service i.e. on 31.08.2007. Hence, his service will be counted as 24 years and not less than 24 years and therefore, he will be eligible for MACP benefit of Naib Subedar grade.

8. The Original Application deserves to be allowed and is **allowed**. The impugned order, if any, passed by the respondents is set aside. The respondents are directed to consider the claim of the applicant for grant of benefit of MACP of Nb Sub grade from the date of discharge from service with all consequential/pensionary benefits to the applicant. The respondents shall take appropriate decision expeditiously, preferably within four months from the date of receipt of certified copy of this order. Delay shall invite interest @ 8% per annum till actual payment.

9. No order as to costs.

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

Dated: 15<sup>th</sup> November, 2021

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