

RESERVED
Court No. 2

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No 139 of 2023

Wednesday, this the 1st day of November, 2023

Hon'ble Mr. Justice Anil Kumar, Member (J)

Hon'ble Maj Gen Sanjay Singh, Member (A)

No. 15619373M, GDSM (MACP I NK) Basant Kumar
S/o Sri Rajendra Yadav
Permanent R/o Village – Khutidih, Post Office – Umga (Purnadih)
District – Aurangabad (Bihar), PIN-824208
Presently Residing at C/o Manoj Kumar Pandey
Dev Vihar Colony, Malak Road, Neelmatha, Lucknow (UP) - 226002

..... Applicant

Ld. Counsel for the Applicant: **Shri Bhanu Pratap Singh Chauhan,**
Advocate

Versus

1. The Union of India, through, Secretary Ministry of Defence (Army), South Block, New Delhi-110010.
2. Chief of the Army Staff, IHQ MOD (Army), South Block, New Delhi.
3. Officer-in-Charge Records, Brigade of the Guards, PIN-900746, C/o 56 APO.
4. PCDA (Pension), Draupadi Ghat, Allahabad, (UP).

..... Respondents

Ld. Counsel for the Respondents : **Shri Arun Kumar Sahu,**
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:-

“A. To issue/pass a direction or an order to the respondent to grant the benefit of Second MACPS (MACP-II) with all the consequential benefits alongwith @12% interest on arrear in light of Hon’ble Tribunal judgments.

B. To issue/pass a direction or an order to the respondent to decide the representation dated 01.03.2022 of the applicant for grant of benefit of Second MACPS.

C. To issue/pass any other order or direction as this Hon’ble Tribunal may deem just, fit and proper under the circumstances of the case in favour of the applicant.

D. To allow this Original application with costs.”

2. Supplementary counter affidavit filed by the respondents and supplementary rejoinder affidavit filed by the applicant are taken on record.

3. The factual matrix on record is that the applicant was enrolled in the Army on 21.07.2004 and he was discharged from service 31.07.2021 under the provisions of Rule 13 (3) item III (i) of Army Rules, 1954 on completion of his terms of engagement after rendering 17 years and 11 days service. The applicant was granted 1st MACP (Naik Grade) w.e.f. 21.07.2012. The applicant while posted with 46 RR Battalion was given first chance in 2017, second chance in 2018 and third chance 2019 but submitted his unwillingness to attend promotion cadre course. The applicant submitted a representation dated 01.03.2022 for grant of MACP-II which has not been disposed of by the respondents. Feeling aggrieved, the

applicant has filed the present Original Application for grant of MACP-II to the rank of Havildar.

4. Learned counsel for the applicant submitted that the Government had introduced Assured Career Progression (ACP) Scheme on recommendation of Vth Central Pay Commission. The said scheme was revised with three financial up-gradations i.e. after 8 years, 16 years and 24 years of service. Subsequently, in May 2011, the Government introduced a Modified Assured Career Progression Scheme (in short, MACPS) for Personnel Below Officer Rank (PBOR) superseding the previous ACP scheme. The scheme was made effective from 01.09.2008 and subsequently, it was made effective w.e.f. 01.01.2006. The applicant was granted benefit of MACP-I (Naik Grade) w.e.f. 21.07.2012 on completion of 8 years of service and his last rank is shown in the PPO as 'SEPOY ACP-I'.

5. Learned counsel for the applicant further submitted that during entire service, applicant's work and conduct was upto the mark and unblemished and he was never punished during his entire service of 17 years. The applicant was not granted benefit of MACP-II after completion of more than 16 years of service which is evident from the monthly pay slip and PPO of the applicant and applicant has been discharged from service giving the benefit of ACP-I only. Being aggrieved, the applicant preferred a representation dated 01.03.2022 for grant of benefit of MACP-II but the same has not yet been decided

by the respondents. Thus, denial of benefit of MACP-II to the applicant is illegal and arbitrary.

6. Learned counsel for the applicant placed reliance on the judgments of AFT, (RB) Lucknow, passed in O.A. No. 153 of 2016 **Ex Hav Vrajesh Kumar Shankhdhar Vs Union of India & Ors** decided on 24.01.2018, O.A. No. 561 of 2019, **Manoj Kumar vs Union of India & Others**, decided on 22.07.2021 and AFT, Kochi Bench in O.A. No. 170 of 2016, **Ex Hav Zubair P Vs Union of India & Others**, decided on 21.02.2017 and submitted that in view of the aforesaid judgments, applicant be granted benefit of 2nd MACP on completion of 16 years of service.

7 Per contra, submission of learned counsel for the respondents is that applicant was enrolled in the Army on 21.07.2004 and he was discharged from service 31.07.2021 (AN) on completion of his terms of engagement after rendering 17 years and 11 days service. Accordingly, he was granted service pension vide PPO dated 11.06.2021. The applicant was granted 1st MACP (Nk Grade) w.e.f. 21.07.2012. He further submitted that as per Para 25 of Govt. of India, Ministry of Defence letter dated 19.05.2009, *"If a regular promotion has been offered but was refused by the employee before becoming entitled to a financial upgradation, no financial upgradation shall be allowed as such an employee has not been stagnated due to lack of opportunities. If however, financial upgradation has been allowed due to stagnation and the employee subsequently, refuses the promotion,*

it shall not be ground to withdraw the financial upgradation. He shall however, not be eligible to be considered for further financial upgradation till he agrees to be considered for promotion again and the second the next financial upgradation shall also be deferred to the extent of period of debarment due to the refusal". He further submitted that as per Para 21 of IHQ of MoD (Army) letter dated 13.06.2011, "*If an individual refuses promotion, MACP will also be denied. If an individual denies 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 applicant was provided three chances for LNK to Nk promotion cadre as conducted by 4 GUARDS, i.e. from 23.08.2017 to 18.10.2017 (1st chance), 01.03.2018 to 18.04.2018 (2nd chance) and from 26.11.2018 to 19.01.2019 (3rd chance), however, applicant submitted unwillingness certificate for all three chances which is evident from 4 GUARDS letter dated 14.03.2023. Unwillingness certificate dated 13.08.2017 to attend first promotion cadre from 23.08.2017 onwards duly signed by the applicant and countersigned by the CO of the unit is attached as Annexure SCA-1. Thus, the applicant did not attend any of the promotion cadres and submitted his unwillingness to undergo cadre, hence, 2nd MACP for Havildar grade was not granted

to the applicant as per policy on the subject vide Govt. of India, Ministry of Defence letters dated 19.05.2009 and 13.06.2011. He pleaded for dismissal of Original Application being devoid of merit and lacking substance.

9. We have heard learned counsel of both the parties and perused the material placed on record.

10. In the instant case, there is no dispute that applicant was enrolled in the Army on 21.07.2004 and was discharged from service 31.07.2021 on completion of his terms of engagement after rendering more than 17 years of service. The applicant was granted 1st MACP (Naik Grade) w.e.f. 21.07.2012. The applicant while posted with 46 RR Battalion was given first chance in 2017 (from 23.08.2017 to 18.10.2017), second chance in 2018 (from 01.03.2018 to 18.04.2018) and third chance in 2018-19 (from 26.11.2018 to 19.01.2019) to undergo promotion cadre course in his parent unit, 4 GUARDS but submitted his unwillingness to attend promotion cadre course. However, only one unwillingness certificate dated 13.08.2017 signed by the applicant to undergo promotion cadre from 23.08.2017 to 18.10.2017 at 4 GUARDS is annexed as SCA-1 alongwith supplementary counter affidavit in which it is mentioned that 'applicant is unwilling to attend LNK to Nk promotion cadre conducted at 4 GUARDS w.e.f. 23.08.2017' but nothing is written in the certificate with regard to unwilling to promotion or MACP. Unwillingness certificates for second and third chance of 2018 & 2019 to attend

promotion cadre have not been filed/annexed by the respondents in their counter affidavit/supplementary counter affidavit which can establish that applicant submitted his unwillingness to benefit of MACP also in both the certificates.

11. The only contention of the respondents is that applicant was denied benefit of 2nd MACP of Havildar grade on the ground that applicant submitted his unwillingness to promotion cadre. However, as per Govt. of India, Ministry of Defence letter dated 13.06.2011, 'if an individual refuses promotion, MACP will also be denied', but in the instant case, applicant submitted his unwillingness to attend promotion cadre and there is nothing on record in the 'Unwillingness Certificate' attached with supplementary counter affidavit which may prove that applicant has refused to take promotion, benefit of MACP in his unwillingness certificate, hence, there is no reason to deny benefit of 2nd MACP (Havildar grade) to the applicant and therefore, we are of the view that applicant is held entitled to get benefit of financial upgradation, i.e. 2nd MACP to the rank of Havildar as due to him, i.e. w.e.f. 21.07.2020.

12. As a result of foregoing discussion/observation, the Original Application is **allowed**. The respondents are directed to grant benefit of MACP-II (Havildar grade) from the due date with all consequential/pensionary benefits of the rank of Havildar and issue a Corrigendum PPO granting arrears of MACP-II (Havildar grade) from the next date of discharge from service, i.e. w.e.f. 01.08.2021

accordingly. The respondents are further directed to implement this order within a period of four months from the date of receipt of certified copy of this order. Delay shall invite interest @ 8% per annum till actual payment.

13. No order as to costs.

14. Pending Miscellaneous Application(s), if any, shall stand disposed off.

(Maj Gen Sanjay Singh)
Member (A)

Dated: November, 2023
SB

(Justice Anil Kumar)
Member (J)