

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No 537 of 2019**Wednesday, this the 8th day of September, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)No. JC-763303-W Bipin Bihari Nayak
S/o Dhruwa Ram Nayak
Presently posted at 2 (I) Field Workshop,
C/o 56 APO

..... Applicant

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

Versus

1. Union of India, through Secretary, Ministry of Defence, New Delhi.
2. Integrated HQ of MOD (Army), Adjutants Gen of Rtg/Rtg-5 (OR) (D) West Block, RK Puram, New Delhi.
3. General Officer Commanding in Chief, Southern Command.
4. Officer-in-charge, 2 (I) Para Field Workshop, C/o 56 APO.
5. The Principal Controller of Defence Account (Pension), Draupadi Ghat, Allahabad (UP).
6. Officer-in-charge, EME Records, Secunderabad PIN-900453, C/o 56 APO.

..... Respondents

Ld. Counsel for the Respondents : **Shri Kaushik Chatterji**
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) To direct to OP to correct substantive appointment as 22.11.2008 at par with direct recruited Religious Teacher.

- (II) To direct to OP fix his pay at par with direct recruited Religious Teacher.
- (III) To set aside clause 24 (e) illustration III of letter dated 06.07.2011 being violative of article 14 and 16 of Constitution of India.
- (IV) To grant same benefit of 3 MACP as is given in the case of direct recruited Religious Teacher.
- (V) To pay arrear of difference of pay alongwith 12% interest wef 22.11.2008 till it is actually paid.
- (VI) Any other suitable relief this Hon'ble Court deems fit and proper may also be granted."

2. The factual matrix on record is that the applicant was enrolled in the Army (AAD) on 05.04.1999. He was promoted to the rank of Naik w.e.f. 15.10.2005 and Havildar w.e.f. 01.04.2008 and was further promoted to the rank of Nb Sub and re-mustered into Religious Teacher category w.e.f. 21.03.2009 and further transferred to Corps of EME and presently serving with 2 (I) Para Field Workshop Company. The applicant submitted a Non Statutory Complaint dated 24.07.2017 for fixation of his seniority and basic pay. After careful examination, the said complaint was rejected by GOC-in-C Southern Command vide order dated 12.05.2018 and applicant was communicated by EME Records vide order dated 24.05.2018. Being aggrieved with the decision of respondents, the applicant has filed the present O.A. for grant of 3rd MACP treating applicant as a case of direct recruited Religious Teacher.

3. Learned counsel for the applicant submitted that after commissioning as JCO (RT), direct recruit Religious Teacher were

given substantive appointment w.e.f. 22.11.2008 whereas combatant Religious Teacher were given substantive appointment w.e.f. 21.03.2009, though as per letter dated 10.06.2011, applicant was senior to his civilian counterpart and he was senior as per merit also. He further submitted that MACP letter dated 06.07.2011 is prejudicial to combatant Religious Teacher as per clause 24(e). The applicant filed non statutory appeal dated 24.07.2017 which was rejected by the respondents vide letter dated 12.05.2018. He pleaded that applicant should also be given benefit of 3rd MACP treating him as a case of direct recruited Religious Teacher.

4. Learned counsel for the respondents submitted that as regards fixation of seniority as per IHQ of MoD (Army) letter dated 11.05.2000, “***procedure of recruitment/selection and training of Religious Teacher in Army, the date of appointment of the direct candidates will be deemed to be taken into consideration for seniority from the date of their joining the General Military Training. However, during the period of training they will continue to have the status of recruits. The re-mustered personnel will however, retain their rank held at the time of joining the training till being commissioned as JCO (RT). The provision of ibid policy, govern the seniority of applicant, wherein a re-mustered JCO (RT) is considered senior to a direct entry JCO (RT), who are appointed as Naib Subedar on the same day.***” Accordingly, seniority of the applicant has been correctly fixed.

5. Learned counsel for the respondents further submitted that as regards fixation of pay, Special Army Instruction 1/S/2008 deals with pay of directly enrolled JCO (RT) which provides that, ***'pay is to be fixed from the date of enrolment, whereas in case of re-mustering personnel, the pay has to be fixed from the date of re-mustering'*** because the applicant was already drawing the pay and allowances of his previous rank till re-mustering. Being a case of fixation of pay & allowances, comments of PAO (OR) EME were also asked and it was confirmed that applicant was drawing pay and allowances of his previous rank till re-mustered, hence his pay was fixed at Rs. 9300/- with grade pay of Rs. 4200/- as per Para 13 of SAI 1/S/2008 from the date of his re-mustering.

6. Learned counsel for the respondents also submitted that with regards to grant of 3rd MACP, it is submitted that as per para 24(e) of IHQ of MOD letter dated 13.06.2011 ***"re-mustered Havs join in direct entry grade of Sep. Since regular service for the purpose of MACP shall commence from the date of joining of a post in direct entry grade (i.e. Sepoy) such re-mustered Havs would deem to have earned a promotion. Hence, they would be entitled to the balance two MACPs. If however, they have availed MACP of Nk or promoted to select Nk prior to re-mustering as Hav they would be entitled to only the third MACP. Similar provisions would apply to a re-mustered JCO"***. As per *ibid* policy :-

“(a) There shall be three financial upgradations under the MACPs, counted from the direct entry grade on completion of 8, 16 and 24 years service.

(b) Financial upgradation under the scheme will be admissible whenever a person has spent 8 years continuously in the same grade pay.

(c) In case an individual gets one promotion prior to completion of 8 years, he will be entitled only two financial upgradations on completion of 16 & 24 years of service or on completion of 8 years service in the same grade whichever is earlier. If he get two promotions, he will be entitled only third financial up-gradation on completion of 24 years of service or 8 years without promotion in the same grade whichever is earlier.”

In the instant case the applicant had already got two promotions (i.e. Nk & Hav) before being re-mustered as JCO, he is not eligible for further MACP benefits as he has got total three promotions (i.e. Nk, Hav and Nb Sub). He pleaded for dismissal of O.A.

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

8. From the aforesaid discussion/observation, it is clear that three financial upgradation under MACPs will be granted to a direct entry Sepoy and Naib Subedar after completion of 8, 16 and 24 years of service as per policy letter dated 13.06.2011. In the instant case, the applicant is direct entry as Sepoy and not as direct entry Naib Subedar and he was re-mustered and promoted to the rank of Nb Sub (RT). Since, the applicant has already been granted three promotions i.e. Nk, Hav and Nb Sub, he is not eligible for any MACP benefits.

9. In view of above, we hold that the claim of applicant for grant of 3rd MACP as a case of direct recruited Religious Teacher has rightly been

rejected by the respondents as per policy on the subject which needs no interference. Resultantly, O.A. is **dismissed**.

10. No order as to costs.

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

Dated: Sept., 2021
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