

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No 281 of 2020**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. 14259199-K Ex Hav Ram Yatan Ram
R/o Vill – Rai Singh Pur, PO – Bhuidharpur (Tikapur)
Tehsil – Nizamabad, Dist – Azamgarh

..... Applicant

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

Versus

1. Union of India, through Secretary, Ministry of Defence, New Delhi.
2. Chief of Army Staff, Army Headquarters Ministry of Defence, Government of India, South Block, New Delhi-110011.
3. The Chief Record officer, Signal Records, Jabalpur (MP).
4. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad (UP).

..... Respondents

Ld. Counsel for the Respondents : **Shri Rajesh Shukla**,
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:-

“(IV) To re-instate in service notionally and discharge on 31.08.2008 on completion of 24 years of service in the light of judgment dated 20.11.2008 passed by the Hon'ble High Court in the case of Sub/Skt Puttan Lal vs. Union of India and Others.

- (V) To pay arrears of salary w.e.f. 01.11.2007 to 31.08.2008.
- (VI) To grant benefit of 3rd MACP having being completed 24 years of service and pay arrears of pension of next higher rank i.e. Nb/Sub along with 12% interest from the date of his discharge i.e. 01.09.2008 till it is actually paid.
- (VII) 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 on 30.08.1984 and was discharged from service on 31.10.2007 (AN) after rendering 23 years and 63 days of service under Army Rule 13 (3) III (V) read with sub rule 2A being placed in low medical category. The applicant is in receipt of service pension vide PPO and Corrigendum PPOs dated 27.05.2008, 02.02.2010 and 16.11.2011. The applicant was promoted to the rank of Naik w.e.f. 01.03.1999 with ante date seniority w.e.f. 14.11.1998 and Havildar w.e.f. 01.04.2004. The applicant was discharged from service on 31.10.2007 (AN) in the rank of Havildar as per Chief of the Army Staff (COAS) letter dated 12.04.2007 being Low Medical Category (LMC). Later, the order of COAS dated 12.04.2007 was challenged before the Hon'ble Delhi High Court and the Hon'ble Delhi High Court vide its order dated 20.11.2008 has been pleased to quash the order of COAS dated 12.04.2007 as discharge of all personnel was without holding IMB and all personnel who were discharged from service were directed to be re-instated with all consequential benefits but applicant was not re-instated in service. Being aggrieved, the applicant has filed present original application for grant of benefit of

pay and allowances and 3rd MACP of Nb Sub grade treating total 24 years of service.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Army on 30.08.1984 and was discharged from service on 31.10.2007 (AN) after rendering 23 years and 63 days of service in the rank of Havildar. As per Chief of the Army Staff letter dated 12.04.2007, LMC personnel were discharged from the Army in bulk. The applicant was also discharged from service under the provisions of Integrated Headquarters of Ministry of Defence (Army) letter dated 12.04.2007 w.e.f. 31.10.2007 (AN). The order of COAS dated 12.04.2007 was challenged before the Hon'ble Delhi High Court and the Hon'ble High Court vide its order dated 20.11.2008 has been pleased to quash the order of COAS dated 12.04.2007 as discharge of all personnel was without holding IMB. All personnel who were discharged from service were directed to be re-instated with all consequential benefits. The Court directed that personnel who were discharged as per policy letter dated 12.04.2007 but could not approach the Hon'ble Delhi High Court, following general direction was issued in para 7 of the judgment to avoid unnecessary huge litigation. Para 7 (i) and (v) being important are reproduced below :-

“7. i) Individual options will be sent by the respondents to such persons within two months making an offer to them to rejoin if they so desire as per the aforesaid directions passed in the present writ petitions. The option letter will indicate that such option has to be exercised within a period of 30 days of the receipt of the letter and in case the retiral and pensionary benefits have been paid to them, such persons must rejoin along with the amount liable to be refunded by them to the respondents which shall also be indicated in the option letter.

v) It is pointed out that there may be certain PBORs, which may also include some petitioners, whose normal date of superannuation has already arrived or would arrive before the aforesaid option is issued. In such cases, the persons would be entitled to only the benefit of pay and

allowances for the differential period after adjusting any additional benefit arising from the premature discharge. Needless to say that those who decide not to rejoin after their premature discharge would neither be entitled to any pay and allowances nor would be required to repay the amount, if any, paid to them after their premature discharge.”

4. Learned counsel for the applicant further submitted that applicant did not receive any option letter as claimed by the respondents in their counter affidavit and his normal date of superannuation arrived on 31.08.2008 before pronouncement of judgment on 20.11.2008 by the Hon'ble Delhi High Court as such he is deemed to have completed 24 years of service on 30.08.2008 and would have retired on 31.08.2008 if he would have not made to premature retired on 31.10.2007 as per policy letter dated 12.04.2007 being LMC. As such, applicant is entitled for salary from 01.01.2007 to 31.08.2008 and accordingly applicant is also entitled for the benefit of 3rd MACP of Nb Sub grade treating completion of 24 years of service on due date of retirement i.e. 31.08.2008.

5. Learned counsel for the applicant also placed reliance on the judgment of AFT (RB) Chennai in O.A. No. 108 of 2012, **M. Sankarraj vs. Union of India and others**, decided on 23.11.2017 and pleaded that applicant should also be given benefit of 3rd MACP after condoning shortfall of service being a similar case.

6. Learned counsel for the respondents 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 and administrative instructions of this effect have been issued vide IHQ of MoD (Army) letter dated 13.06.2011. The conditions and eligibility criteria as per letter dated 13.06.2011 are as below:-

“(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.”

7. Learned counsel for the respondents further submitted that applicant was discharged from service under the provisions of Integrated Headquarters of Ministry of Defence (Army) letter dated 12.04.2007 and 27.06.2007 under the scheme of ‘Management of Permanent Low Medical Category Personnel Below Officer Rank (PBOR) in the Army’. Subsequently, IHQ of MoD (Army) letters dated 12.04.2007 and 27.06.2007 were quashed by the Hon’ble Delhi High Court vide order dated 20.11.2008 with direction to the respondents that “Personnel who stand discharge as a consequences of the aforesaid policy letters are entitled to be re-instated with all the consequential benefits including continuity of service, pay and allowances and seniority as per rules”. The Hon’ble Delhi High Court issued following directions in para 7 of the judgment:-

“i) Individual options will be sent by the respondents to such persons within two months making an offer to them to rejoin if they so desire as per the aforesaid directions passed in the present writ petitions. The option letter will indicate that such option has to be exercised within a period of 30 days of the receipt of the letter and in case the retiral and pensionary benefits have been paid to them, such persons must rejoin along with the amount liable to be refunded by them to the respondents which shall also be indicated in the option letter.

ii) The respondents will also give a public notice/advertisement apart from issuing the individual notice in a suitable manner preferably in national newspapers.

iii) It is made clear that such persons will also be governed by all the directions made in respect of the petitioners herein insofar as applicable.

iv) The general directions are applicable only to such of the persons who have been discharged or proposed to be discharged under the policy letter dated 12.04.2007 or those who may have been discharged earlier but have already approached the competent court by filing a petition.

v) It is pointed out that there may be certain PBORs, which may also include some petitioners, whose normal date of superannuation has already arrived or would arrive before the aforesaid option is issued. In such cases, the persons would be entitled to only the benefit of pay and allowances for the differential period after adjusting any additional benefit arising from the premature discharge. Needless to say that those who decide not to rejoin after their premature discharge would neither be entitled to any pay and allowances nor would be required to repay the amount, if any, paid to them after their premature discharge.”

8. Learned counsel for the respondents further submitted that in the instant case, the normal date of retirement of the applicant was 31.08.2008 which was already arrived well before the promulgation of the Hon'ble Delhi High Court order dated 20.11.2008 as well as issue of option letter. Therefore, as per the Delhi High Court order, Signals Records forwarded an 'Option Letter' vide letter dated 19.03.2011 to the applicant stating that *“if you wish to avail the benefit of pay and allowances w.e.f. 01.11.2007 to 31.08.2008, you have to deposit the AGIF disability benefit i.e. Rs. 1,12,500/- based on the court order. You are requested to forward you option as per format attached. On receipt of your 'Option' further action will be taken by this office. If 'Option' is not received by this office till 31.03.2011, it will be presumed that you have NOT OPTED to be notionally re-instated”*. However, the applicant neither forwarded his 'Option' nor any intimation to the Records Signals. Consequently, he was not notionally reinstated in the service. Hence, he was not granted the benefit of pay and allowances for the intervening period i.e. from

01.11.2007 to 31.08.2008 in accordance with court order dated 20.11.2008.

9. Learned counsel for the respondents also submitted that as for as MACP is concerned, as per Govt. of India, Ministry of Defence letter dated 30.05.2011, ACP scheme was revised as MACP scheme for granting benefit on 8, 16 & 24 years of regular service which was effective from 01.09.2008 vide IHQ of MOD letter dated 13.06.2011. Later it was made effective from 01.01.2006 vide IHQ of MOD letter dated 25.07.2018. Since, the applicant has neither completed total 24 years of regular service nor 8 years in the same grade pay, hence, in accordance with policy letter dated 13.06.2011, the applicant being not meeting service criteria as per policy, he is not eligible for grant of 3rd MACP of Naib Subedar grade. He pleaded for dismissal of O.A.

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

11. We observe that as per the Hon'ble Delhi High Court order dated 20.11.2008, applicant was issued an 'Option Letter' by Signals Records vide letter dated 19.03.2011 as mentioned in their counter affidavit but the so called letter of 'Option' has not been received by the applicant, as denied in the O.A. If the applicant would have received the option letter, he would have submitted it back to the respondents and would have notionally re-instated in service and would have got arrears of his pay and allowances of the intervening period from 01.11.2007 to 31.08.2008. Since, he has not got the option letter sent by the respondents, the applicant is not in fault to exercise option. In addition, since, the applicant has agreed not to

claim arrears of pay and allowances of the intervening period from 01.11.2007 to 31.08.2008 but prayed for grant of benefit of 3rd MACP of Nb Sub Grade which seems to be genuine request as if applicant would not have been discharged from service in low medical category as per COAS order dated 12.04.2007 and would have been allowed to complete his 24 years of service according to his terms of engagement, then he would have become entitled to 3rd MACP on his due date of retirement i.e. 31.08.2008. Hence, the plea of the respondents that applicant has not completed 24 years of regular service for grant of 3rd MACP is not sustainable and resultantly, applicant becomes entitled for 3rd MACP of Nb Sub grade on due date of his retirement i.e. 31.08.2008 treating his 24 years of service.

12. In view of above, Original Application is allowed with the direction to the respondents to consider the claim of the applicant for grant of benefit of Modified Assured Career Progression Scheme (MACP-III) of Nb Sub grade with effect from due date of retirement i.e. 31.08.2008 treating his total 24 years of service and grant all consequential benefits to the applicant. The impugned order passed by the respondents, if any, is set aside. 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.

13. 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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