

**RESERVED**  
**Court No. 1**

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

**ORIGINAL APPLICATION NO 157 of 2016**

Thursday, this the 04<sup>th</sup> day of January, 2018

**“Hon’ble Mr. Justice D.P. Singh, Member (J)**  
**Hon’ble Air Marshal BBP Sinha, Member (A)”**

No. 9512045H Ex Havildar Jog Dhyan Sharma son of late Som Dutt Sharma resident of Flat No C-307 Ansal Town, Modipuram Bye Pass Meerut 250110 (UP). **....Applicant**

Ld. Counsel for the : **Shri R. Chandra, Advocate.**  
Applicant

Verses

1. Union of India, through, the Secretary, Ministry of Defence, Government of India, New Delhi.
2. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence (Army), DHQ, Post Office New Delhi.
3. The Officer-in-Charge Records The Kumaon Regiment, PIN-900473, C/o 56 APO.
4. The Chief Controller Defence Accounts, Draupadi Ghat, Allahabad (UP).

.....Respondents

Ld. Counsel for the : **Shri Amit Sharma, Central**  
Respondents. **Govt Counsel assisted by Maj Salen Xaxa,**  
**OIC Legal Cell.**

**ORDER****"Per Hon'ble Air Marshal BBP Sinha, Member (A)"**

1. The present application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 seeking the relief of setting aside the impugned order dated 14.05.2016 attended with the relief to direct the respondents to grant the benefit of first MACPS on completion of 8 years of service on 26.06,2000 and second MACPS on completion of 16 years of service on 26.06.2008 respectively.

2. The Applicant in the instant case was enrolled in the Indian Army as Havildar Instructor on 26.06.1992 and was discharged from service on 28.02.2010 under Army Rule 13 (3) III (iv), that is, before completion of the terms of engagement. The total service rendered by the Applicant was 17 years 08 months and 02 days of service.

3. The main brunt of submission advanced on behalf of the Applicant is that the Government had introduced Assured Career Progression (ACP) Scheme on recommendation of V Central Pay Commission. The said Scheme was revised with three financial up-gradations i.e. after 8 years, after 16 years and after 24 years of service. The government introduced a Modified Assured Career Progression Scheme ( In short

MACPS) for personnel below officer Rank superseding the previous ACP Scheme. The Scheme was made to take effect from 01.09.2008. The crux of grievance of the Applicant is that the Applicant has been denied the benefits of the said scheme inspite of the fact that he had subsequently expressed his willingness but the same was turned down as he had given an undertaking earlier forgoing Map Craft Course.

4. Learned counsel for the Applicant canvassed that MACP Scheme had not been introduced when the Applicant had given undertaking forgoing the promotion course as the scheme was brought to bear by letter dated 30.05.2011. In this view of the matter, the submission is that any undertaking given prior to implementation of MACP Scheme should not operate as an obstacle in the way of benefits of the scheme which may accrue to him. It is also submitted that the Applicant approached the respondents for benefits of the Scheme and also submitted his willingness certificate dated 29.03.2016 but the same was not considered by the respondents.

5. On the other hand, the contentions advanced by learned counsel for the respondents is that subsequent to issue of MACP detailed administrative instructions for grant of MACP were issued by the Army Headquarters in June 2011 vide

letter dated 13.06.2011. Para 21 of the Instructions clarified that if an individual refuses promotion MACP will also be denied. Para 15 of the Appendix to the Instructions clarified that unwillingness to attend promotion cadre amounts to unwillingness or refusal for promotion. It is also contended that the Applicant had been detailed to undergo mandatory Map Craft Instructor Course to meet the criteria for promotion to the next higher rank but instead, he put in certificate containing his unwillingness to undergo the course. It is also contended that the willingness certificate was given subsequent to his discharge attended with further submission that had the applicant qualified the mandatory course and remained in service, he would have been eligible for promotion to next higher rank and all benefits accruing under MACP Scheme alongwith his batch-mates would have also been extended to him.

6. The Applicant has not claimed any benefit from earlier ACP Scheme introduced in the year 2003 being a direct entry Havildar. The MACP was brought into force with effect from 01.09.2008. The Applicant was discharged from service w.e.f 28.02.2010. In the circumstances, there appears to be substance in the submission that the Applicant be made eligible for MACP after 01.09.2008.

7. The contentions of the respondents are two-folds firstly that he had been discharged before completion of terms of engagement on his own request and second that he had given unwillingness to undergo criteria course of promotion which made him ineligible for promotion and for benefits accruing from MACP. In this connection, he referred to Para 15 of Appendix 'A' to Army Headquarters Administrative Instructions which postulates that unwillingness to attend promotion cadre course also amounts to unwillingness/refusal for promotion. The learned counsel also contended that the willingness given subsequent to his discharge, also made him ineligible for the benefits of the Scheme. On the other hand, learned counsel for the Applicant submitted that unwillingness which he had expressed earlier to introduction of MACP would not extinguish his right as the applicant did not get an opportunity of promotion till the time introduction of MACP.

8. It is worthy of notice here that at the time of submission of certificate containing his unwillingness, there was no MACP Scheme. The earlier ACP scheme which was introduced in August 2003, was not applicable to direct entry Havildars like the Applicant. It is also worthy of notice that ACP scheme of 2003 as well as MACP Scheme of 2011 merely envisaged grant of financial benefits to Personnel Below Officer Rank through

placement in a higher pay scale and was not to be considered as functional or regular promotion. It cannot be said that unwillingness certificate rendered in accordance with Record Office instructions were irrevocable inasmuch as there was a provision to apply for withdrawal of unwillingness certificate and for subsequent detailment of the course provided the individual made such an application to obtain the sanction of Additional DG AE. The additional DG AE could then consider the submission made by the individual and grant necessary waiver.

9. It may be noted that it is not the first case. Earlier also, the Kochi Bench of Armed Forces Tribunal examined and dwelt on this aspect in **O.A No 170 of 2016 Ex Hav Zubair P vs Union of India and others** and converged to the conclusion leaning in favour of the Applicant of the O.A. Hence the question whether a person who had refused to undergo promotion course or had given permanent unwillingness for promotion was eligible for MACP is no more res integra. Coming to the present case, the question that surfaces is whether the applicant had any opportunity for promotion based on vacancies available from the date of coming into effect of MACP till his discharge. If the Applicant had no opportunity for promotion for want of vacancy in the next

higher rank, then his claim for MACP could not be denied only on the basis of the undertaking containing his unwillingness. The contention that unwillingness to undergo mandatory/criteria course for promotion amounts to unwillingness/refusal for promotion, does not commend to us for acceptance inasmuch as there is no such provision in the Administrative instructions issued by Army Headquarters. The provisions of Para 15 quoted by the respondents is only in Appendix A to the Administrative Instructions which is essentially a compilation of frequently asked questions on MACPS. While the answer to question no 15 states that unwillingness to attend promotion cadre amounts to unwillingness/refusal for promotion, since there are no enabling provisions in the Policy letters governing the issue, a mere question/answer in the Appendix cannot be claimed as a provision to deny the benefit of MACPS. Thus there appears to be no substance in the contention that benefits of MACP Scheme were not available to the Applicant on account of unwillingness certificate given by him prior to introduction of MACP Scheme.

10. It may also be noted here that when MACP Scheme was introduced to be effective from 01.09.2008, the applicant who had been enrolled in the Army on 26.06.1992 had about 17

years of service. Therefore, in accordance with the provisions, he was eligible by requisite service for second MACP with effect from 01.09.2008 as he had a little over 16 years of service as on that date provided he did not have any chance for promotion prior to that date. Even-if the Applicant had opted to undergo the Criteria course, he would have no chance for further promotion as by the date he was discharged, there appeared to be no vacancy as the immediate senior and juniors to the Applicant had already been promoted in terms of particulars mentioned in paragraph 15 in PWC.

11. The next contention advanced is that the Applicant had been discharged at his own request and in the circumstances; it might be possible that he had no further motive to serve the organisation. The Applicant had been entitled, in case he would have been in service as the Applicant was entitled to apply for revocation of his adverse career certificate inasmuch as such application has to be submitted in prescribed format which condition was applicable to those who were already in service. As stated supra, in our considered view, there was no enabling provision in the MACP which could disentitle the Applicant merely because he was no more in service. The only condition that was available was that if the Applicant had no opportunity for promotion for want of vacancy in the next



higher rank, the benefit of MACP could not be denied to him merely on the basis of unwillingness certificate.

12. As a result of foregoing discussion the O.A is allowed and the respondents are directed to give due consideration to the claim of the applicant for the benefit of second MACP with effect from 01.09.2008 by ignoring the unwillingness certificate given by him for promotion provided he is found fit after due screening in accordance with law. The appropriate decision shall be intimated to the applicant within a period of four months from the date of receipt of a certified copy of this order. If the arrears of revised pay/pension based on MACP, shall be restricted to a period of three years prior to filing of the O.A.

13. There shall be no order as to costs.

**(Air Marshal BBP Sinha)**  
**Member (A)**

**(Justice Devi Prasad Singh)**  
**Member (J)**

Dated: January, 2018  
MH/-