

**RESERVED**  
**Court No. 2**

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

**ORIGINAL APPLICATION NO 153 of 2016**

Wednesday, this the 24<sup>th</sup> day of January, 2018

**“Hon’ble Mr. Justice SVS Rathore, Member (J)**  
**Hon’ble Air Marshal BBP Sinha, Member (A)”**

No. 9512007M Ex Havildar Vrajesh Kumar Shankhdhar, son of Shri Ram Asre Shankhdhar, resident of 70/53/S-204, Surya Vihar, RBRC Das Road, Balrampur House, Allahabad - 211002

**....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-110011
2. Chief of Army Staff, Army Headquarters, DHQ Post Office, New Delhi-110011
3. The Officer-in-Charge, Army Education Corps Records, Pachmarhi, District Hoshangabad (M.P.)
4. Pay Accounts Office (Other Ranks), Pachmarhi Cantt, district Hoshangabad (M.P.)

.....Respondents

Ld. Counsel for the : **Mohd. Zafar Khan, 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 with further relief to direct the respondents to grant the benefit of first MACPS on completion of 8 years of service on 02.06.2000 and second MACPS on completion of 16 years of service on 02.06.2008 respectively.

2. Shorn of details, the facts of the case are that the Applicant was enrolled in the Army Education Corps as Instructor as direct entry Havildar on 02.06.1992 and was discharged from service on 30.11.2009 under Rule 13 (3) III (iv) of the Army Act, 1950, i.e. before fulfilling the conditions of enrolment/service on his own request. The total service put in by the Applicant was 17 years 05 months and 29 days of service.

3. Learned counsel for the Applicant submitted 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 which was also made applicable to direct entry Havildars/JCOs.

Subsequently, in May 2011, 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 on the erroneous ground that he had expressed unwillingness on 29.06.2006 to undergo the Preliminary Test for Post Graduate Course, 2006-2007. It is further submitted by learned counsel for the Applicant that despite executing the undertaking, the right of the Applicant to receive benefits conferred by MACP did not extinguish for the reason that the Applicant did not get opportunity of promotion till the time the MACP was implemented.

4. Learned counsel for the Applicant submitted that MACP Scheme had not been introduced when the Applicant had given undertaking forgoing the promotion course as the scheme was implemented by letter dated 30.05.2011. In essence, submission of learned counsel for the Applicant is that an undertaking given prior to implementation of MACP Scheme would not create a hurdle in granting 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 28.03.2016 for ACP/MACP but the same was not considered by the respondents.

5. The contentions advanced by learned counsel for the respondents, per contra, 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 31.11.2019. 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 the Applicant had been discharged before completion of terms of engagement on his own request; and, secondly that the individuals who had given unwillingness to undergo criteria course of promotion were permitted to submit their willingness for the mandatory courses but the Applicant did not submit his willingness, as such, he was ineligible for promotion and consequently for benefits accruing from MACP. Attention of the Tribunal was invited 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 Applicant did not submit his willingness which made him ineligible for the benefits of the Scheme.

8. 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.

9. 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 Personal 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.

10. 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. The Armed Forces Tribunal, Regional Bench, Kochi had an occasion to consider this aspect of the matter and observed as under:

*“As observed, the applicant had given unwillingness certificate on 20th Jun 2003, in accordance with the provisions of AEC Record Office Instructions specifying mandatory criteria courses for promotion and impact of unwillingness to undergo such courses. The ROI specified that an individual who is unwilling to attend criteria course/promotion cadre, relinquishes his claim for next higher rank as he has not qualified the necessary promotion course. At the stage of signing such a certificate, there was no MACP Scheme which was introduced only in May 2011 to be effective from 01 Sept 2008. Even the earlier ACP was Scheme introduced in August 2003, which, as such was not applicable to direct entry Havildars like the applicant. The ACP Scheme of 2003 as well as the MACP Scheme of 2011 merely envisaged grant of financial benefits to Personnel Below Officer Rank (PBOR) of the three services through placement in a higher pay scale and was not to be considered as functional or regular promotion. It is also observed that the unwillingness certificate rendered in accordance with ROI is not really irrevocable as there were provisions 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. The aspect of 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 as this Bench had examined the issue in O.A.No.73/14 and connected cases and more recently in O.A.Nos.26 and 40 of 2015 and O.A.No.25/2016 and connected cases. In our view, the question to be considered is whether the applicants had any opportunity for promotion based on vacancies available from the date of coming into effect of MACP till their retirement. If the applicants had no opportunity for promotion for want of vacancy in the next higher rank, then their claim for MACP could not be denied only on the basis of the undertaking*

*executed by them. While the respondents have also contended that unwillingness to undergo mandatory/criteria course for promotion amounts to unwillingness/refusal for promotion, it is observed that there is no such provision in the Government letters at Annexures A2 and A4 or in the Administrative Instructions issued by Army Headquarters (Annexure R1). 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. Therefore, we do not see any merit in such a contention and the benefit of MACP Scheme could not be denied to the applicant merely on the basis of an unwillingness certificate given by him prior to the introduction of the Scheme, if he had no opportunity for promotion for want of vacancy in the next higher rank. 11. When the MACP Scheme was introduced to be effective from 01 September 2008, the applicant, who had been enrolled on 20 Apr 1990, had a little over 18 years of service. Therefore, in accordance with the provisions, he was eligible by requisite service for second MACP with effect from 01 September 2008 as he had more than 16 years of service as on that date provided he did not have any chance for promotion prior to that date. The respondents have submitted that the immediate senior as well as the immediate junior of the applicant were promoted with effect from 01 Feb 2011 ie more than 2 years after the date of introduction of MACP Scheme. Therefore, in our view, the applicant did not have any opportunity for promotion to next higher rank for want of vacancy prior to 01 Sep 2008 even if he had qualified in the criteria course. Hence, he was eligible for the benefit of second MACP with effect from 01 Sep 2008 provided he was found fit after due screening in accordance with law.”*

11. Coming to the present case, the moot question which arises for adjudication 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 impress 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, as observed in the case of **Ex Hav Zubair P vs Union of India and others** (supra), 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 is no enabling provision 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. 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.

12. 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.

13. 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.

14. 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. However, 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.

15. No order as to costs.

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

**(Justice SVS Rathore)**  
**Member (J)**

Dated: January, 2018  
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