

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No 212 of 2021**Monday, this the 6<sup>th</sup> day of December, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**No. 13683169H Ex Hav Kiranvir Singh  
S/o Sri Raghuvir Singh  
R/o House No. 202, hari Enclave, Chandpur Road,  
Bulandshahar (UP) – 203001

..... Applicant

Ld. Counsel for the Applicant: **Shri K.K. Misra**, Advocate

Versus

1. Union of India, through its Secretary, Ministry of Defence, New Delhi.
2. The Chief of Army Staff, South Block, New Delhi
3. Officer-in-Charge Records, Brigade of Guards, Kamptee.
4. PCDA (P) Allahabad.

..... 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:-

- “(i) To quash Records, Brigade of Guards, Kamptee, letter No 13683169/RTI/C-Cell dated 26 June 2019 (Annexure A-4 to OA).
- (ii) If the shortfall of 19 days in service, declared by the respondents is treated as legal, as per the policy of Army

HQs, condone the delay of 19 days for the purpose of this up gradation.

- (iii) To direct the respondents to grant the benefit of this scheme, MACPS, to the applicant, from 01 Jan 2006 with arrears and interest as applicable.
- (iv) Any other relief which Hon'ble Court may think just and proper may be granted in favour of the applicant.
- (v) Cost of the case may be allowed."

2. The factual matrix on record is that the applicant was enrolled in the Army on 29.04.1982 and was discharged from service on 30.04.2006 under the provisions of Rule 13 (3) III (i) of Army Rules, 1954 after rendering 24 years of service (including 19 days NQS). The applicant represented his case to Records, Brigade of Guards vide letter dated 20.05.2019 which was refuted by the respondents vide letter dated 26.06.2019 on the ground that he is short of 24 years of service for grant of MACP-III. Being aggrieved, the applicant has filed present original application.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Army on 29.04.1982. The applicant was promoted to the rank of Havildar in his own turn. The applicant was discharged from service on 30.04.2006 on completion of his terms of engagement after rendering 24 years and 2 days of service. Accordingly, he is in receipt of full service pension for the rank of Havildar. As per 6<sup>th</sup> CPC MACP scheme is applicable for grant of three financial upgradations at intervals of 8, 16 and 24 years of continuous service vide IHQ of MoD (Army) letter dated 30.05.2011

and is effective w.e.f. 01.01.2006. The applicant after rendering 24 years of service in the rank of Havildar is entitled for the benefit of MACP-III. The applicant represented his case to Records, Brigade of Guards vide letter dated 20.05.2019 which was replied by the respondents vide letter dated 26.06.2019 stating that applicant was not entitled for the benefit of this scheme as he has not completed 24 years of mandatory service as he is short of 19 days Non Qualifying Service (NQS).

4. Learned counsel for the applicant further submitted that applicant's absence of 19 days was regularised by way of award of 7 days pay fine by CO of the unit therefore, his service be treated full 24 years as rendered by him. Denying benefit of MACP saying short of 19 days NQS would tantamount to a double jeopardy as he was awarded 7 days pay fine for the absence which is violation of Article 20 of the Constitution of India. The applicant is eligible for MCAP-III (Nb Sub Grade) and he should be granted benefit accordingly.

5. Learned counsel for the respondents submitted that applicant was enrolled in the Army on 29.04.1982 and was discharged from service on 30.04.2006 under the provisions of Rule 13 (3) III (i) of Army Rules, 1954 after rendering 23 years, 11 months and 13 days of service (excluding 19 days NQS). He was granted service in the rank of Havildar vide PPO dated 19.01.2006. The applicant preferred an application dated 20.05.2019 under RTI Act 2005 for grant of MACP-III w.e.f. 01.01.2006. Accordingly, Records, Brigade of Guards vide letter dated 26.06.2019 replied that applicant has neither completed 8 years of service in the rank of Havildar nor completed 24

years of qualifying service due to 19 days of NQS being AWL, hence, he is not entitled for grant of MACP-III (Naib Subedar Grade).

6. Learned counsel for the respondents further 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 which was later on made effective w.e.f. 01.01.2006 by the judgment of the Hon'ble Apex Court. As per Govt. of India, Ministry of Defence letter dated 30.05.2011 as amended vide Govt. of India, Ministry of Defence letter dated 25.07.2018, MACP-III is granted to those who have either completed eight years of service in the rank of Havildar or have completed 24 years of qualifying service. Since the applicant at the time of discharge from service neither completed 8 years of service in the rank of Havildar nor completed 24 years of qualifying service, he is not entitled for grant of MCP-III as per existing policy. He also submitted that there is no provision for condonation of service for grant of MACP.

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

8. We find that MACP scheme is effective w.e.f. 01.01.2006 for grant of three financial upgradations at intervals of 8, 16 and 24 years of service. In the present case, applicant was discharged from service in the rank of Havildar on completion of terms of engagement of service after rendering 24 years and 2 days of service in which there was NQS of 19 days on account of AWL for which applicant was awarded 7 days pay fine.

9. So far as prayer of the applicant for condonation of short fall of 19 days in order to become eligible to get MACP-III benefit after rendering 24 years of service is concerned, the Court, keeping in view the facts and circumstances of the case, is of the view to condone the shortfall of 19 days as per IHQ of MoD (Army) letters No. B/33513/ACP/AG/PS-2(c) dated 13 June 2011 and even No. dated 03.06.2016. Hence, 19 days NQS is condoned and the applicant is held entitled to get the benefit of MACP-III on the date he has completed 24 years of service, i.e. 29.04.2006.

10. In the result, Original Application is allowed. The impugned order passed by the respondents is set aside. The respondents are directed to consider the claim of the applicant for grant of notional promotion to the rank of Naib Subedar giving the benefit of MACP-III (Naib Subedar grade) w.e.f. 29.04.2006 with all consequential/pensionary benefits of the rank of Naib Subedar and issue a Corrigendum PPO accordingly. The Respondents are directed to comply with the order within a period of four months from the date of receipt of certified copy of the order. Default will invite interest @ 8% per annum till actual payment.

11. No order as to costs.

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

Dated: December, 2021

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