

RESERVED
(court-2)

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 857 of 2023

Friday, this the 15th day of December, 2023

Hon'ble Mr. Justice Anil Kumar, Member (J)
Hon'ble Maj Gen Sanjay Singh, Member (A)

No. 16017855F, NK/TS, Sandeep Bahadur Singh S/o Sri Bhagawat Singh, Permanent Resident of 323, Lila Pura, Samhal, Mansurabad, Allahabad, Uttar Pradesh-228411.

.....Applicant

Ld. Counsel for : **Shri Narayan Dutt Mishra**, Advocate
Applicant

Versus

1. The Union of India, through Secretary, Ministry of Defence (Army), South Block, New Delhi-110010.
2. Chief of the Army Staff, IHQ of MoD (Army), South Block, New Delhi.
3. Officer-in-Charge Records, Rajputana Rifles Regimental Centre, Delhi Cantt.
4. PCDA (Pension), Draupadi Ghat, Allahabad.

.....Respondents

Ld. Counsel for the : **Shri Devesh Kumar**, Advocate
Respondents Central Govt Standing Counsel

ORDER

1. This Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 whereby the applicant has claimed the following reliefs:-

(a) To issue/pass a direction or an order to the respondents to grant the benefit of Second MACPS (MACP-II) with all the consequential benefits alongwith @ 12% interest on arrear in light of Hon'ble Tribunal judgments.

(b) To issue/pass a direction or an order to the respondents to decide the representation dated 01.12.2022 of the applicant for grant of benefit of Second MACPS.

(c) To issue/pass any other order or direction as this Hon'ble Tribunal may deem just, fit and proper under the circumstances of the case in favour of the applicant.

(d) To allow this original application with costs.

2. The factual matrix on record is that the applicant was enrolled in the Army on 04.03.2004 and was discharged from service on 31.03.2021 after rendering more than 17 years of service in terms of Rule 13 (3) III (i) of Army Rules, 1954 on fulfilling the conditions of his service. The applicant was granted first Modified Assured Career Progression (MACP) on 04.03.2012 on completion of 08 years of service and was due for second financial upgradation on completion of 16 years of service as on 04.03.2020. On account of submission of unwillingness certificate, applicant was denied further promotion with regard to MACPS and was discharged from service without granting benefits of second MACP. Applicant submitted a representation dated 01.12.2022 for grant of 2nd MACP but there was no response. Hence, this O.A. has been

filed for grant of benefit of 2nd MACP on completion of 16 years of service as on 04.03.2020.

3. Learned counsel for the applicant submitted that after completion of 8 years of service, applicant was granted benefit of 1st MACP (Naik Grade) w.e.f. 04.03.2012 but after completion of 16 years of service he has not been awarded benefit of 2nd MACP (Havildar Grade) w.e.f. 04.03.2020 as applicable as per Govt of India letter of May 2011. Pay matrix of the applicant has not been revised correctly as per recommendations of 6th & 7th CPC w.e.f. 01.01.2006 and 01.01.2016 respectively. The applicant's pay has been fixed in pay matrix of ACP Naik @ Rs. 36,400/- whereas applicant is entitled to pay matrix of ACP Havildar @ Rs. 39,200/- w.e.f. 04.03.2020 by granting benefit of 2nd MACP of Havildar grade on completion of 16 years of service as per Govt. of India, Ministry of Defence letter dated 26.02.2019.

4. Learned counsel for the applicant further submitted that controversy in question has already been decided by various Benches of Armed Forces Tribunal. He placed reliance on the judgment of ***AFT (RB) Lucknow in OA No. 153 of 2016 Ex Hav Vrajesh Kumar Shankhdhar Vs UOI & Others*** decided on 24.01.2018, ***AFT (RB) Kochi in OA No. 170 of 2016 Ex Hav Zubair P Vs UOI & Others*** and (PB) New Delhi in OA No. 113 of 2014, ***Sub Chittar Singh & Ors vs. Union of India & Others***, decided on 10.12.2014 and AFT (RB) Lucknow order in OA 405 of 2021, ***Ex Hony Nb Sub Radhey Krishna vs.***

Union of India & Others, decided on 21.01.2022 and OA No. 820 of 2022, **Ex ACP Nb Sub Gitam Singh vs. Union of India & Others**, decided on 06.02.2023 and pleaded that applicant should also be given benefit of 2nd MACP being a similar case. He further submitted that action of respondents for not granting of 2nd financial upgradation to the rank of MACP Havildar and subsequently incorrect fixation of Pay Matrix and pensionary benefits is wholly illegal and not sustainable in the eyes of law and is in violation of Articles 14, 16 and 21 of the Constitution of India which envisages 'equal pay for equal work'.

5. Per contra, learned counsel for the respondents submitted that applicant was enrolled in the Indian Army on 04.03.2004. He was granted 1st Modified Assured Career Progression (MACP) on 04.03.2012 on completion of 8 years of continuous service. As per Para 21 of IHQ of MoD (Army) letter dated 13.06.2011, *'If an individual refuses promotion, MACP will also be denied. If an individual refuses promotion after MACP, earlier MACP will not be withdrawn. However, he will be eligible for further MACP. If he again accepts promotion, MACP will also be deferred by the period of debarment due to refusal. Willingness of promotion will be assumed unless an individual states he is unwilling'*. Since, the applicant has rendered permanent unwillingness for promotion to the next rank vide his unwillingness certificated dated 03.06.2018, 15.09.2018 and 18.07.2019, the applicant is not eligible for

further grant of MACP benefits after submission of Unwillingness certificate.

6. Learned counsel for the respondents also submitted that as per Para 15 of Appendix 'A' of Army Headquarters letter dated 13.06.2011 passing of promotion cadre is mandatory for promotion. As such, unwillingness to attend promotion cadre amounts to unwillingness/refusal to promotion as per Army Headquarters letter dated 11.07.2018. Since, the applicant has rendered his permanent unwillingness certificate for the said promotion cadre, he is not eligible for grant of benefit of 2nd MACP as per policy.

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

8. In the instant case, applicant was enrolled in the Indian Army on 04.03.2004. He was granted 1st Modified Assured Career Progression (MACP) on 04.03.2012 on completion of 8 years of continuous service. The applicant was discharged from service on 31.03.2021 after rendering 17 years & 28 days of service without granting 2nd MACP. The applicant submitted a representation for grant of 2nd MACP on completion of 16 years of service but no relief was granted to the applicant.

9. 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 to this effect have been issued vide IHQ of MoD (Army) letter dated 13.06.2011 and this

scheme was later on made effective w.e.f. 01.01.2006 by which three financial upgradations were to be granted to PBORs on completion of 8, 16 and 24 years of service respectively. However, there was also a provision that if an individual is unwilling to undergo promotion cadre, he will not be granted the benefit of scheme until and unless he passes the promotion cadre course and unwillingness submitted by an individual will amount to denial of promotion as well as MACP due to him.

10. The applicant has given unwillingness to undergo promotion cadre and Unwillingness Certificate dated 03.06.2018, 15.09.2018 and 18.07.2019, have been annexed alongwith counter affidavit in which it is clearly mentioned in para 1 (d) that applicant is aware that **he will not be granted benefit of further MACP by giving this Unwillingness Certificate**. For convenience sake, unwillingness certificate dated 03.06.2018, 15.09.2018 and 18.07.2019, are reproduced as under:-

“WILLING/UNWILLINCESS CERTIFICATE

I, No 16017855F L/Nk Sandeep Bahadur of 3 RAJ RIF hereby declare that I am willing/unwilling to attend L/Nk to Nk Promotion Cadre commencing wef may 2018 to June 2018 at unit loc.

*Sd/- x x x
(Sig of indl)
No : 16017855F
L/Nk Sandeep Bahadur Singh*

Date – 03 Jun 2018

“WILLING/UNWILLINCESS CERTIFICATE

I, No 16017855F L/Nk Sandeep Bahadur of 46 Inf Bde Camp am willing/unwilling to take next promotion to the rank of Nk.

*Sd/- x x x
(Sig of indl)
No : 16017855F
L/Nk Sandeep Bahadur Singh*

Station c/o 99 APO

Dated 15 Sep 2018

“WILLING/UNWILLINCESS CERTIFICATE

1. I, No 16017855F L/Nk Sandeep Bahadur have been detailed for L/Nk to Nk (Name of Cadre) promotion cadre wef 01 Aug to -----.
2. I wish to state that I am unwilling to attend the said cadre and am unwilling for promotion this time.
3. I am aware that this unwillingness for promotion at this time will deny MACP as due to me.

Sd/- x x x
 (Sig of indl)
 No : 16017855F
 L/Nk Sandeep Bahadur Singh

Date – 18.07.2019

11. We find that applicant has given permanent unwilling for promotion cadre/promotion which debarred him from further promotion and also for grant of benefit of MACP as per Govt. policy letters dated 13.06.2011 and 11.07.2018. The facts of the case laws relied upon by the applicant in Para 4 above, are different from the present case. Hence, we are of the view that applicant's claim for grant of benefit of 2nd MACP (Havildar Grade) without fulfilling mandatory criteria is not sustainable and has rightly been rejected by the respondents which need no interference.

12. In view of above, Original Application has no merit. It deserves to be dismissed and is accordingly, **dismissed**.

13. No order as to costs.

14. Misc. Application(s), pending if any, shall be treated to have been disposed of.

(Maj Gen Sanjay Singh)
Member (A)

Dated : 15th December 2023

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(Justice Anil Kumar)
Member (J)

RESERVED
(Court No 2)

Form No. 4
{See rule 11(1)}
ORDER SHEET ARMED FORCES TRIBUNAL,
REGIONAL BENCH, LUCKNOW

O.A. No. 857 of 2023

Ex Nk (TS) Sandeep Bahadur Singh

Applicant

By Legal Practitioner for the Applicant

Versus

Union of India & Ors

Respondents

By Legal Practitioner for Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>15.12.2023</u> <u>Hon'ble Mr. Justice Anil Kumar, Member (J)</u> <u>Hon'ble Maj Gen Sanjay Singh, Member (A)</u></p> <p>Judgment pronounced. O. A. No. 857 of 2023 is dismissed. For orders, see our judgment and order of date passed on separate sheets.</p> <p>(Maj Gen Sanjay Singh) Member (A)</p> <p>(Justice Anil Kumar) Member (J)</p> <p><i>rspal</i></p>