

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No 121 of 2021****Thursday, this the 17th day of February, 2022****Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)No. JC-696371P Sub (RT) Rama Kant Mishra
S/o Shri Shesh Mani Mishra
R/o 748 Kharika, Launga Kheda, Telibagh,
Dist – Lucknow, Pin-226029 (UP)

..... Applicant

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

Versus

1. Union of India, through Secretary, Ministry of Defence, New Delhi-110011.
2. The Chief of Army Staff, COAS Sectt, IHQ of MoD (Army), South Block, New Delhi – 110011
3. The Officer-in-Charge Records, AMC, Lucknow-2 (UP).
4. Commanding Officer, 317 Field Hospital, Pin-903317, C/o 56 APO.
5. The PAO (OR), AMC, Lucknow, Pin-226002 (UP).

..... Respondents

Ld. Counsel for the Respondents : **Shri Yogesh Kesarwani**,
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:-

- “A. To issue/pass an order or directions to the respondents to fix the seniority of appointment date wef 24.11.2007, similar to the directly recruited civilian batchmates appointed/selected as Religious Teacher (RT JCO).

- B. To issue/pass an order or directions to the respondents to fix his initial pay wef 24.11.2007 similar to his batchmates directly recruited Religious Teacher (RT JCO) as per 6th CPC, subsequently, increment granted time to time with DA.
- C. To issue/pass an order or directions to the respondents to fix his Band Pay as per 7th CPC, similar to his batchmates directly recruited Religious Teacher (RT JCO) wef 01.01.2016 with increment and DA granted time to time.
- D. To issue/pass an order or directions to the respondents to pay the arrears of difference of pay and allowances with interest @ 18% p.a. wef 24.11.2007 (i.e. date of selection of RT JCO) till it is actually paid, alongwith complete due drawn report.
- E. To issue/pass an order or directions to the respondents to consider the appointment/selection of combatant Religious Teacher as Junior Commissioned Officer (RT), instead of MST JCO (RT), being a different cadre and selection procedure under the aegis of IHQ of MoD (Army).
- F. To issue/pass an order or directions to the respondents to grant the benefits of 3rd MACP as per seniority, similar to his batchmates directly recruited Religious Teacher.
- G. 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."

2. The brief facts of the case are that applicant was enrolled in the Army (AOC) on 26.08.1996 as a Sepoy. He was promoted to the rank of Naik on 05.08.2001 and Havildar on 01.11.2004. He was re-mustered in the category of Religious Teacher and was transferred to Army Medical Corps (AMC) from AOC w.e.f. 20.03.2008 and

promoted to the rank of Naib Subedar. After appointment to the rank of Nb Sub (RT), applicant came to know that direct recruited Religious Teachers have been given the appointment seniority w.e.f. 24.11.2007, i.e. from the date of enrolment, however, the applicant alongwith other combatant RTs of the same batch have been given the appointment seniority w.e.f. 20.03.2008, i.e. date of completion of course from INI Pune. The applicant is praying for the relief to fix his seniority of appointment date and basic pay w.e.f. 24.11.2007, similar to the directly recruited civilian batch-mates appointed/selected as RT JCOs. The prayer of the applicant was rejected as the applicant completed his training at INI, Pune on 20.03.2008, accordingly, his seniority and basic pay @ Rs. 9300/- + GP 4200/- has been fixed in the rank of Naib Subedar w.e.f. 20.03.2008, i.e. final day of training at INI, Pune as per 6th CPC. Being aggrieved, the applicant has filed the present Original Application.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Indian Army (Army Ordnance Corps) on 26.08.1996. The applicant was promoted to the rank of Havildar in April 2004 before selection to Junior Commissioned Officer (JCO) rank of Naib Subedar as Religious Teacher (RT) in the Army w.e.f. 24.11.2007. The applicant was promoted to the rank of Subedar w.e.f. 01.01.2020. The applicant was selected as RT and his course RRT-55 (Pandit) commenced at AMC Centre, Lucknow w.e.f. 24.11.2007 alongwith directly enrolled from civil in different Training Centres and second phase training completed at Institute of National Integration (INI), Pune and thereafter, applicant was transferred/posted to Army Medical

Corps. As per para 28 of ADG, Manpower, IHQ of MoD (Army) letter dated 10.06.2011, "All combatant candidates will be senior to fresh civilian candidates who are appointed as Naib Subedar (RT) on the same day". After appointment to the rank of Nb Sub (RT), applicant came to know that direct recruited Religious Teachers have been given the appointment seniority w.e.f. 24.11.2007, i.e. from the date of enrolment, however, the applicant alongwith other combatant RTs of the same batch have been given the appointment seniority w.e.f. 20.03.2008, i.e. date of completion of course from INI Pune, unjustly and arbitrarily and in violation of Para 28 of IHQ of MoD (Army) letter dated 10.06.2011.

4. Learned counsel for the applicant further submitted that as per Monthly Pay Slip of 04/2014, Band pay of directly enrolled RT JCOs has been fixed for Rs. 11940/- whereas applicant's Band Pay has been fixed for Rs. 11470/- unjustly and arbitrarily as the seniority of directly enrolled RT JCOs was fixed from 24.11.2007 whereas applicant's seniority was fixed from 20.03.2008 and thus, there is disparity in fixation of basic pay of directly enrolled RT JCOs and remustered JCOs. As per 7th CPC, directly enrolled RT JCOs have been fixed @ Rs. 50,500/- whereas applicant has been fixed for Rs. 46,200/-. The combatant RT JCOs who are senior to his directly enrolled RT JCOs from civil are getting only two MACPs of Subedar and Subedar Major, whereas directly enrolled RT JCOs from civil are getting three MACPs of Subedar, Subedar Major and Hony Lt. from the date of selection, as such combatant RT JCOs who are initially

senior to his civil counterpart are getting less Band pay, and become junior during the entire service without any fault on their part.

5. Learned counsel for the applicant placed reliance on the judgment of Central Administrative Tribunal, Jodhpur in OA No. 382/2011 in **Bhanwar Lal Regar vs. UOI & Ors** alongwith OA No. 353/2011 with MA No. 19/2012 and OA No. 354/2011 with MA No. 20/2012 decided on 22.05.2012 wherein applicant was granted third MACP. Learned counsel for the applicant pleaded that fixation of basic pay of the applicant in the rank of Naib Subedar as RT JCO, seniority and subsequent fixation are not logical and rational and need re-fixation/stepping up alongwith benefit of 3rd MACP.

6. Learned Counsel for the respondents submitted that applicant was enrolled in the Army (AOC) on 26.08.1996 as a Sepoy. He was promoted to the rank of Naik on 05.08.2001 and Havildar on 01.11.2004. He was remustered in the category of Religious Teacher and was transferred to Army Medical Corps (AMC) from AOC w.e.f. 20.03.2008 and promoted to the rank of Naib Subedar. In the instant case, applicant was erroneously granted 1st MACP to the rank of Subedar w.e.f. 20.03.2016 on completion of 8 years from the date of remustering considering him as directly recruited RT JCO vide AMC Records Part II Order dated 11.05.2016. The same has been cancelled vide Part II Order dated 15.12.2020 after coming to the notice that applicant is not eligible for grant of MACP in terms of para 24(e) of IHQ of MoD (Army) letter dated 13.06.2011.

7. Learned Counsel for the respondents further submitted that as per AMC Record Office Instructions (ROI), it has been clearly stated that fresh candidates will be deemed to have being recruited from the date of their joining the General Military Training (GMT). During the training, these candidates will have the status of recruits for all purpose. The re-mustering candidates will, however, retain their rank held at the time of joining the training till being commissioned as JCO (RT). The date of appointment of selected candidates as Naib Subedar (RT) will be date of final day of training at INI Pune. In the instant case, the applicant is praying for the relief that “to fix the seniority of appointment date and basic pay w.e.f. 24.11.2007, similar to the directly recruited civilian batch-mates appointed/selected as RT JCOs, which is not applicable to him as the applicant completed his training at INI, Pune on 20.03.2008. Accordingly, his seniority and basic pay @ Rs. 9300/- + GP 4200/- has been fixed in the rank of Naib Subedar w.e.f. 20.03.2008, i.e. final day of training at INI, Pune as per 6th CPC and further revision of pay and allowances from time to time has been done.

8. Learned Counsel for the respondents also submitted that as per 6th CPC, qualifying period for earning an increment is six months on 1st July, therefore, applicant being re-mustered JCO got his next increment on 01.07.2009. As per IHQ of MoD (Army) letter dated 13.06.2011, since regular service for the purpose of MACP shall commence from the date of joining of a post in direct entry grade (i.e. Sepoy), such re-mustered Havildars would deem to have earned a promotion, hence, applicant is not entitled for 3rd MACP. He pleaded

to dismiss Original Application as there is no involvement of fixation of basic pay/seniority and benefit of 3rd MACP in the case.

9. Heard learned counsel for the parties at length and perused the relevant documents available on record.

10. It is pertinent to mention here that CAT judgment relied up by the applicant in Para 5 above is not relevant in this case being based on different facts and circumstances and therefore, applicant cannot be given the benefit of aforesaid judgment.

11. It is emerged from the above that applicant was re-mustered in the category of Religious Teacher and was transferred to AMC from AOC w.e.f. 20.03.2008 and promoted to the rank of Naib Subedar (RT) on completion of course at INI, Pune. As per AMC ROI, fresh candidates will be deemed to have being recruited from the date of their joining GMT. The re-mustered soldiers will, however, retain their rank held at the time of joining the training. The date of appointment of selected candidates as Naib Subedar (RT) will be date of final day of training at INI, Pune. In the instant case, directly recruited civilian batch-mates appointed/selected as RT JCOs w.e.f. 24.11.2007, which is not applicable to the applicant as he has completed his final day of training at INI, Pune on 20.03.2008. Accordingly, his seniority and basic pay @ Rs. 9300/- + GP 4200/- has been correctly fixed in the rank of Naib Subedar w.e.f. 20.03.2008 as per 6th CPC and further revision of pay and allowances has also been done from time to time. Hence, there appears no anomaly in fixation of seniority/Band Pay in

the rank of Nb Sub (RT JCO) in comparison to his directly recruited civilian batch-mates.

12. In view of AMC ROI and policy letters, we hold that the claim of applicant for correct fixation of seniority in the rank of Nb Sub (RT) and basic pay in comparison to his directly recruited civilian batch-mates (RT JCOs) has no force and has rightly been rejected by the respondents as per rules which needs no interference. Resultantly, O.A. is **dismissed**.

13. No order as to costs.

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

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

Dated: February, 2022
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