

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No 465 of 2021**Tuesday, this the 8th day of February, 2022**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)No. 14480056-F Ex Hav Jadunath Singh,
R/o Village – Dudivar, PO – Kuchela,
Teh/Dist – Mainpuri (UP) – 205001

..... Applicant

Ld. Counsel for the Applicant: **Shri Ravi Kumar Yadav** and
Shri Ajeet Yadav, Advocate

Versus

1. Union of India, through Sec Min of Def, Room No. 101 A, South Block, DHQ PO, New Delhi, Pin – 110011.
2. The Chief of Army Staff, Integrated Headquarters of MoD (Army), Post – DHQ, New Delhi-110011.
3. The Officer-in-Charge, Artillery Records, Pin – 908802, C/o 56 APO.
4. The PCDA (P) Army Allahabad (UP) Pin – 211012.

..... Respondents

Ld. Counsel for the Respondents : **Shri Bipin Kumar Singh**,
Central Govt Counsel.**ORDER (Oral)**

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 quash and set aside the Respondent No. 3 letter dated 21 Jan 2021 (Annexure A-1 of instant OA & Impugned Order) wherein applicant was rejected for grant of 3rd MACP (Nb Sub) for the reason that applicant was retired on immediate completion of 24 years of service and hence not eligible for grant of 3rd MACP (Nb Sub).

- (b) To issue/pass an order or directions of appropriate nature to the respondents to grant 3rd MACP (Nb Sub) to the applicant with effect from 01.09.2006 by condoning shortfall of qualifying service, if any, and fix service pension accordingly. Furthermore, suitable directions may be issued to respondents to pay the arrears of pension of 3rd MACP (Nb Sub) from 01.09.2006 along with suitable rate of interest as deem fit by this Hon'ble Tribunal.
- (c) To pass such further order or orders/Directions as this Hon'ble Tribunal may deem fit and proper in accordance with law.”

2. Counter affidavit filed by the respondents and rejoinder affidavit filed by the applicant are taken on record.

3. The factual matrix on record is that the applicant was enrolled in the Army on 01.09.1982 and was discharged from service on 31.08.2006 under Rule 13 (3) III (i) of Army Rules, 1954 on fulfilling the conditions of enrolment after rendering 24 years of service. Grievance of the applicant is that he has been denied benefit of Modified Assured Career Progression Scheme (MACP) of Nb Sub grade. The applicant submitted an application dated 28.12.2020 which was suitably replied by the respondents vide letter dated 12.01.2021. Being aggrieved, the applicant has filed present original application for grant of benefit of 3rd MACP w.e.f. 01.09.2006.

4. Learned counsel for the applicant submitted that applicant was enrolled in the Army on 01.09.1982 and was discharged from service on 31.08.2006 under Rule 13 (3) III (i) of Army Rules, 1954 on fulfilling the conditions of enrolment after completion of 24 years of

qualifying service. Applicant came to know that MACP policy has been made applicable w.e.f. 01.01.2006, hence he submitted a representation dated 28.12.2020 for grant of 3rd MACP (Nb Sub grade) as the applicant satisfied eligibility criteria of 24 years of qualifying service. The claim of the applicant was denied by the respondents vide letter dated 12.01.2021 stating that applicant was retired on immediate completion of 24 years of service and hence, not eligible for grant of 3rd MACP (Nb Sub). As per para 4 of the policy letter dated 13.06.2011 there is a provision that on stagnation if the individual remain in the same rank and not promoted to next higher rank, the financial up-gradation of next rank at an interval of 8, 16 and 24 years of continuous regular service from the date of enrolment or 8 years of regular service in the same grade pay, whichever is earlier. Since, the applicant was discharged from service on completion of 24 years of qualifying service he met out the basic eligibility condition to get 3rd MACP.

5. Learned counsel for the applicant placed reliance on the judgment of Armed Forces Tribunal, Regional Bench, Chennai in O.A. No. 108 of 2016, **Ex Hav M. Sankarraj vs. Union of India & Ors**, AFT (RB), Kochi in O.A. No. 103 of 2011: **Ex Havildar Abraham. C.U. and others vs. Union of India and others**, decided on 17.07.2013 and AFT, Circuit Bench, Nainital in O.A. No 178 of 2021, **Ex Hav Sher Singh vs. Union of India & Ors**, decided on 15.11.2021 and pleaded that applicant's case is squarely covered with aforesaid judgments and therefore, applicant is also entitled for the benefit of 3rd MACP (Nb Sub Grade) w.e.f 01.09.2006.

6. Learned counsel for the respondents 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 and administrative instructions of this effect have been issued vide IHQ of MoD (Army) letter dated 13.06.2011. The conditions and eligibility criteria as per letter dated 13.06.2011 are as below:-

“(a) There shall be three financial upgradations under the MACPs, counted from the direct entry grade on completion of 8, 16 and 24 years service.

(b) Financial upgradation under the scheme will be admissible whenever a person has spent 8 years continuously in the same grade pay.

(c) In case an individual gets one promotion prior to completion of 8 years, he will be entitled only two financial upgradations on completion of 16 & 24 years of service or on completion of 8 years service in the same grade whichever is earlier. If he get two promotions, he will be entitled only third financial up-gradation on completion of 24 years of service or 8 years without promotion in the same grade whichever is earlier.”

7. Learned counsel for the respondents further submitted that applicant was enrolled in the Army on 01.09.1982 and was discharged from service on 31.08.2006 under Rule 13 (3) III (i) of Army Rules, 1954 on fulfilling the conditions of enrolment. The applicant was granted service pension for 24 years in the rank of Hav. The applicant submitted an application dated 28.12.2020 for grant of 3rd MACP which was suitably replied by the respondents vide letter dated 12.01.2021 stating the reasons for non entitlement of 3rd MACP (Nb Sub grade). As per Ministry of Defence letter dated 30.05.2011, MACP scheme was introduced granting three financial up-gradations to JCOs/OR at an interval of 8, 16 and 24 years of continuous regular

service or whenever a person spends 8 years continuously in the same grade pay. Since, the applicant was enrolled on 01.09.1982 and was discharged from service w.e.f. 31.08.2006 (AN), hence, applicant is not entitled for grant of 3rd MACP as he was not in service on next day after completion of 24 years of qualifying service to receive benefits of 3rd MACP (Nb Sub grade) as per Appendix 'A' to IHQ of MoD (Army) letter dated 13.06.2011 and 20.06.2011, *"if an individual enrolled on 1st of a month, he will retire on last day of the previous month. Similarly if an individual is enrolled on last day of the month, he will be retired the same day. In both the above eventualities, a Havildar will retire before completion 24 years of service and hence will not be eligible for grant of MACP"*. In view of above, the applicant is not entitled for grant of 3rd MACP of Naib Subedar grade due to policy constraint.

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

9. We find that applicant was discharged from service on 31.08.2006 just on completion of 24 years of service, therefore, after giving the benefit of **Hav Sher Singh** (supra) case, the applicant shall become entitled for the benefit of 3rd MACP but it is observed from the counter affidavit that applicant was promoted to the rank of Havildar on 26.07.2004 and after serving two years only in the rank of Havildar, he was discharged from service on 31.08.2006, so, the applicant did not spend 8 years continuous in the same grade pay in the rank of Havildar, therefore, benefit of **Hav Sher Singh** (supra) case cannot be

extended to the applicant being not served 8 years in the same grade pay/rank.

10. In the result, we are of the view that claim of applicant for grant of benefit of 3rd MACP (Nb Sub grade) without fulfilling mandatory criteria of 24 years of service or 8 years continuous service in the same grade pay/rank as per Govt. policies is not sustainable and have rightly been rejected by the respondents which need no interference.

11. In view of above, O.A. has no merit, deserves to be dismissed and is accordingly **dismissed**.

12. No order as to costs.

13. 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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