

**RESERVED**  
**(Court No 2)**

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

**ORIGINAL APPLICATION No. 632 of 2023**

Thursday, this the 29<sup>th</sup> day of February, 2024

**“Hon’ble Mr. Justice Anil Kumar, Member (J)**  
**Hon’ble Maj Gen Sanjay Singh, Member (A)”**

Dharmendra Tyagi (No. 15698672K Ex Sepoy), S/o Sri Sheersh Ram Tyagi, R/o House No 83-C/6, Madhuvan Vihar Colony, Umarpur, Neewa, District-Prayagraj, U.P.

..... Applicant

Ld. Counsel for the : **Shri Ashok Kumar**, Advocate.  
Applicants

Versus

1. Union of India through Secretary, Ministry of Defence, South Block, Delhi-110011.
2. The Officer-in-Charge Records, Signals, PIN-908770, C/o 56 APO.
3. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad.

.....Respondents

Ld. Counsel for the :**Shri Bipin Kumar Singh**, Advocate  
Respondents. Central Govt. Counsel

## ORDER

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs :-

- (a) *The Hon'ble Court may graciously be pleased to direct the respondents to grant benefit of MACP (Modified Assured Career progression I and II) along with arrear and interest to the applicant w.e.f. 01.01.2006 taking into consideration 17 years, 17 days services of applicant.*
- (b) *This Hon'ble Court may further be pleased to pass such other and/or further order as deemed fit, proper and necessary in the circumstances of this case.*
- (c) *Award costs to the applicant.*

2. Rejoinder affidavit filed on behalf of the applicant is taken on record. In the said rejoinder affidavit, no new ground has been taken by the applicant and points have been repeated as pleaded in the O.A.

3. Brief facts of the case are that the applicant was enrolled in the Army on 14.04.2005 and discharged from service w.e.f. 30.04.2022 (AN) under Rule 13 (3) III (i) of Army Rules, 1954 on fulfilling terms of engagement. He rendered 17 years and 17 days service in the Army for which he is in receipt of service pension vide PCDA (P), Prayagraj PPO No. 205202202346. During the course of his service, he was granted benefits of 1<sup>st</sup> MACP (Naik grade) w.e.f. 14.04.2013.

4. Grievance of the applicant is that he has been denied MACP-II even after he completed 16 years service, which is a criterion for grant of MACP-II as per policy letter dated 25.06.2018. In this regard applicant submitted application dated 30.10.2022 addressed to his Commanding Officer but no heed being given to his application, this O.A. has been filed.

5. Submission of learned counsel for the applicant is that the applicant is entitled for grant of MACP-II grade pay after completion of 16 years service in terms policy letters on the subject issued from time to time for grant of MACP. Further submission of learned counsel for the applicant is that respondents have denied grant of MACP-II even after submitting grievance dated 30.10.2022 to his Commanding Officer which is not justified. His contention is that the three financial upgradations are based on length of service rendered i.e. MACP-I on completion of 08 years service, MACP-II on completion of 16 years service and continuously remaining in MACP-I grade pay for 08 years and MACP-III on completion of 24 years service and continuously remaining in MACP-II grade pay for 08 years preceding to date becoming eligible for grant of the above financial upgradations. In support of his contention the applicant has relied upon order dated

24.01.2018 passed by this Tribunal in O.A. No 153 of 2016, ***Ex Havildar Vrajesh Kumar Shankhdhdar vs UOI & Ors.*** The learned counsel pleaded for grant of MACP-II to the applicant based on order passed by this Tribunal.

6. Per contra, learned counsel for the respondents submitted that the applicant was enrolled in the Army with terms of engagement of 17 years colour and 02 years as reserve. In due course of time, he was attested. He further submitted that the applicant was granted MACP-I on due date on completion of 08 years service. His further submission is that consequent to giving his unwillingness certificate for further promotion he became ineligible for grant of MACP-II and that is the reason he was denied MACP-II in terms of policy on the subject. He pleaded for dismissal of O.A.

7. Heard Shri Ashok Kumar, learned counsel for the applicant and Shri Bipin Kumar Singh, learned counsel for the respondents and perused the records.

8. Grievance of the applicant is that he was denied MACP-II even after he completed 16 years colour service. In this regard a reference was made by learned counsel for the applicant that based on order dated 24.01.2018 (supra) applicant is also entitled for grant of MACP-II.

9. The Govt of India, Min of Defence had introduced Assured Career Progression Scheme (ACP) for grant of two financial upgradations in the interval of 10 and 20 years continuous service in same grade pay and subject to fulfilling the other eligibility conditions. The above scheme was further revised after 6<sup>th</sup> CPC to Modified Assured Career Progression Scheme (MACP) for grant of three financial upgradations at intervals of 8, 16 and 24 years of continuous service subject to fulfilling the other eligibility conditions. Accordingly, the applicant was granted 1<sup>st</sup> financial upgradation under MACP Scheme on completion of 08 years continuous service and on fulfilling other criteria.

10. We observe that the applicant had given unwillingness certificate for further promotion. Respondent' contention is that after rendering unwillingness certificate the applicant became ineligible for grant of MACP-II in terms of para 21 of policy letter dated 13.06.2011. On perusal we find that para 21 prohibits MACP-II on rendering unwillingness certificate for further promotion. For convenience sake the aforesaid para is reproduced as under:-

*“21. Effect of Refusal of Promotion. If an indl refuses promotion, MACP will also be denied. If an indl refuses promotion after MACP, earlier MACP will not be withdrawn. However, he will not be eligible for further MACP. If he again accepts promotion, MACP will also be*

*deferred by the period of debarment due to refusal. Willingness for promotion will be assumed unless an indl states he is unwilling.*

11. We have perused the certificate given by the applicant. He has rendered certificate for unwillingness for promotion certifying that he was unwilling for further promotion and wished to retire from service in his present rank on completion of service limits. The applicant has further certified that his option was irreversible which will make him not eligible for promotion any time in future service including financial upgradations under MACP and he has no objection, if he is superseded by his juniors for promotion. Hence, the applicant is not eligible for grant of MACP-II as he himself has rendered unwillingness certificate for further promotion. For convenience sake, extract of certificate dated 19.01.2018 rendered by the applicant is reproduced as under:-

*Unwillingness Certificate for the  
Promotion/Promotion Cadre*

*"1. I, No 15698672K Rank Sigm Trade OCC Name Dharmendra Tyagi of Northern Comd Sig Regt hereby certify that I am permanent unwilling for further promotion/promotion cadre. I understand the consequential effects of my opinion and I undertake that:-*

*(i) I cannot submit a request to withdraw the permt unwillingness cert once submitted and it is final. Temporary unwillingness can be withdrawn 12 months periods.*

*(ii) The loss of seniority because of my unwillingness both, temporary and permanent cannot be restored at later stage.*

*(iii) I will be posted as per turnover and sector profile.*

*(iv) I am aware that I am not eligible for grant of MACP on permanent unwilling for promotion cadre/promotion. In case of temporary unwilling I am forfeiting MACP from the date of temporary unwillingness till further willing for promotion cadre/promotion.”*

12. In view of the above, it is clear that while tendering his unwillingness, he accepted that he is foregoing further promotion and MACP. That being the position, the applicant having decided to give up his right for promotion and MACP by tendering his unwillingness, he is not entitled to the benefit of MACP. Accordingly, finding no case made out for grant of any relief, the application stands dismissed.

13. No order as to costs.

14. Miscellaneous applications, pending if any, stand disposed of.

**(Maj Gen Sanjay Singh)**  
**Member (A)**

Dated : 29.02.2024

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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. 632 of 2023

Ex Sep Dharmendra Tyagi

Applicant

By Legal Practitioner for the Applicant : **Shri Ashok Kumar, Advocate**

Versus

Union of India &amp; Ors

Respondents

By Legal Practitioner for Respondents : **Shri Bipin Kumar Singh, Advocate**

| Notes of the Registry | Orders of the Tribunal   |
|-----------------------|--|
|                       | <p data-bbox="527 1548 665 1580"><u>29.02.2024</u></p> <p data-bbox="527 1583 1136 1620"><u>Hon'ble Mr. Justice Anil Kumar, Member (J)</u></p> <p data-bbox="527 1623 1136 1661"><u>Hon'ble Maj Gen Sanjay Singh, Member (A)</u></p> <p data-bbox="625 1723 901 1755">Judgment pronounced.</p> <p data-bbox="625 1774 1031 1806">O. A. No. <b>632</b> of <b>2023</b> is dismissed.</p> <p data-bbox="625 1827 1421 1860">For orders, see our judgment and order passed on separate sheets.</p> <p data-bbox="544 1970 901 2037">(Maj Gen Sanjay Singh)<br/>Member (A)</p> <p data-bbox="527 2040 609 2072"><i>rathore</i></p> <p data-bbox="1177 1970 1469 2037">(Justice Anil Kumar)<br/>Member (J)</p> |