

Court No. 2**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No 634 of 2023**Monday, this the 26<sup>th</sup> day of February, 2024**Hon'ble Mr. Justice Anil Kumar, Member (J)****Hon'ble Vice Admiral Atul Kumar Jain, Member (A)**

Anurag (No. 15698729n Ex Sepoy)

S/o Sri Mithlesh Kumar

R/o House No. 899/3 A Durga Ka Bagh Pathoria, Jhansi Khas,

District Jhansi (UP) – 284002

..... Applicant

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

Versus

1. Union of India through Secretary, Ministry of Defence, south Block, Delhi – 110011.

2. The Office Incharge Records, Signals, PIN 908770, C/o 56 APO.

3. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad.

..... Respondents

Ld. Counsel for the Respondents : **Shri Anurag Mishra**,  
Central Govt. Standing 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) The Hon'ble Court may graciously be pleased to direct the respondents to grant benefit of MACP (Modified Assured Career progression I & II) along with arrear and interest to the applicant w.e.f. 1-1-2006 taking into consideration 17 years, 16 days services of applicant.

(ii) This Hon'ble Court may further be pleased to pass such other and/or further order as deem fit, proper and necessary in the circumstances of this case.

(iii) Award costs to the applicant.

2. The factual matrix on record is that the applicant was enrolled in the Indian Army on 15.04.2005. He was granted 1<sup>st</sup> Modified Assured Career Progression (MACP) w.e.f. 15.04.2013 on completion of 8 years of continuous service. The applicant was discharged from service on 30.04.2022 under Rule 13 (3) III (i) of Army Rules 1954 after rendering 17 years & 16 days of service and was granted service pension in the rank of ACP Naik vide PPO No. 205202202302. Applicant submitted an application/letter dated 03.11.2022 to the respondents for granting benefit of MACP-II as per ACP scheme of 2003 and MACP scheme of 2011 but no reply received from the respondents. Hence, the applicant has filed present original application for grant of 2<sup>nd</sup> MACP (Havildar Grade) on completion of 16 years of service.

3. Learned counsel for the applicant submitted that after completion of 8 years of service, applicant was granted benefit of 1<sup>st</sup> MACP (Naik Grade) w.e.f. 15.04.2013 but after completion of 16 years of service he has not been awarded benefit of 2<sup>nd</sup> MACP (Havildar Grade) w.e.f. 15.04.2021 as applicable as per Govt of India, Ministry of Defence letter of May 2011 and 25.06.2018. Pay matrix of the applicant has not been revised correctly as per recommendations of 6<sup>th</sup> & 7<sup>th</sup> CPC w.e.f. 01.01.2006 and 01.01.2016 respectively and

benefit of stepping up has also not been given to the applicant resulted that applicant is drawing less pension than his juniors.

4. Learned counsel for the applicant further submitted that controversy in question has already been decided by various Benches of the Armed Forces Tribunal. He placed reliance on the judgment of AFT (RB) Lucknow in OA No. 153 of 2016, **Ex Havildar Vrajesh Kumar Shankhdhar vs. Union of India & Others**, decided on 24.01.2018 and pleaded that the applicant should also be given benefit of 2<sup>nd</sup> MACP being a similar case. He further submitted that action of respondents for not granting of 2<sup>nd</sup> financial upgradation to the rank of ACP Havildar and subsequently incorrect fixation of Pay Matrix and pensionary benefits is wholly illegal and not sustainable in the eyes of law and it is violation of Article 39 (d) of the Constitution of India which envisages 'equal pay for equal work'.

5. Learned counsel for the respondents submitted that the applicant was enrolled in the Indian Army on 15.04.2005. He was granted 1<sup>st</sup> MACP (Naik Grade) w.e.f. 15.04.2013 on completion of 8 years of continuous service. The applicant was discharged from service on 30.04.2022 under Rule 13 (3) III (i) of Army Rules 1954 after rendering 17 years & 16 days of service and was granted service pension in the rank of ACP Naik vide PPO No. 205202202302. 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 10.10.2018, the applicant is not eligible for further grant of MACP benefits after submission of Unwillingness certificate.

6. Learned counsel for the respondents also stated 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 and benefit of MACP, he is not eligible for grant of benefit of 2<sup>nd</sup> MACP as per policy.

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

8. In the instant case, applicant was enrolled in the Indian Army on 15.04.2005. He was granted 1<sup>st</sup> Modified Assured Career Progression (MACP) on 15.04.2013 on completion of 8 years of continuous service. The applicant was discharged from service on 30.04.2022 after rendering 17 years & 16 days of service. The applicant submitted a representation for grant of 2<sup>nd</sup> 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 of 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 upgradation 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 10.10.2018 has been annexed alongwith counter affidavit (Annexure R-V) in which it is clearly mentioned in para 1 (d) that ***"I am aware that I am not eligible for grant of MACP on permanent unwillingness for promotion cadre/promotion."*** Unwillingness Certificate dated 10.10.2018 is reproduced as under:-

**"UNWILLINCESS CERTIFICATE FOR  
THE PROMOTION/PROMOTION CADRE**

1. I, No 15698729N Rank L/Nk Trade OCC Name Anurag of Northern Comd Sig Regt hereby certify that I am ~~temporary~~/permanent unwilling for further promotion/promotion cadre. I understand the consequential effects of my option and I undertake that :-
  - (a) 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.
  - (b) The loss of seniority because of my unwillingness both temporary and permanent cannot be restored at later stage.

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

(d) 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 unwilling till further willing for promotion cadre/promotion.

Unit : Northern Comd Sig Regiment

Stn : c/o 56 APO  
Dated : 10 Oct 2018

Sd/- x x x  
(Signature of indl)  
No : 15698729N  
Rank : L/Nk  
Name : Anurag

**COUNTERSIGNED**

Station : c/o 56 APO

Dated : 10 Oct 2018

Sd/- x xx  
(Karan Dhawan)  
Col  
Commanding Officer  
Northern Comd Sig Regt"

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 in **Vrajesh Kumar Shankhdhar** (supra), relied by the applicant in para 4 above, is different from the present case. Hence, we are of the view that applicant's claim for grant of benefit of 2<sup>nd</sup> MACP (Havildar Grade) without fulfilling mandatory criteria is not sustainable and have 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.

15. Learned counsel for the respondents orally submitted to grant leave to appeal against the above order, which we have considered and no point of law of general public importance being involved in this case, the plea is rejected.

**(Vice Admiral Atul Kumar Jain)**  
**Member (A)**

Dated: 26<sup>th</sup> February, 2024  
SB

**(Justice Anil Kumar)**  
**Member (J)**