

(Court No 2)

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 491 of 2024

Monday, this the 17th day of February, 2025

**“Hon’ble Mr. Justice Anil Kumar, Member (J)
Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”**

15422960Y Ex TS Nk T Goutham Kumar, S/o Shri Tegala Anjaiah, R/o-9-1-224/A/14/14/B, Prashant Nagar Phase-2m Babu Ghat, Langar House, Golconda, Hyderabad, Andhra Pradesh-500008.

..... Applicant

Ld. Counsel for the Applicants : **Shri Rama Kant**, Advocate.
Shri Shiv Narain Kaushal, Advocate

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi-110001.
2. Chief of Army Staff, IHQ of MoD (Army), South Block, New Delhi-110011.
3. Sena Chikitsa Corps Abhilekh Karyalaya, Army Medical Corps Record Office, PIN-900450, C/o 56 APO.
4. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Prayagraj (UP)-211001.

.....Respondents

Ld. Counsel for the Respondents. : **Ms Kavita Mishra**, Advocate
Central Govt. Counsel

ORDER (Oral)

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

- (a) *Set aside the impugned order dated 18 Mar 2024 and direct to the respondents to treat the Ex soldier's eligible for MACP.*
- (b) *Direct to respondent No 3-4 to grant benefit of 2nd MACP (Hav Grade) w.e.f. 22.03.2021 and also pay difference of salary/payment as applicable.*
- (c) *Direct to revise the pension of applicant as per 2nd MACP (Hav) w.e.f. 01.04.2022 and issue corrigendum PPO and also pay arrears of difference of pension.*
- (d) *To pay the arrears of difference of pension along with interest @ 9% per annum till the date of payment.*
- (e) *To summon the entire records of the applicant pertaining to computation of the benefits to the applicant under Modified Assured Career Progression Scheme.*
- (f) *To award any other relief as considered by this Hon'ble Tribunal in favour of the applicant.*

2. Brief facts of the case are that the applicant was enrolled in the Army on 22.03.2005 and was discharged from service w.e.f. 31.03.2022 (AN) under Rule 13 (3) III (i) (a) of the Army Rules, 1954 on fulfilling the terms of engagement. He rendered 17 years and 10 days service in the Army for which he is in receipt of service pension vide PCDA (P), Prayagraj PPO No. 203202200492 dated 01.04.2022. During the course of his service on completion of eight years service in the rank of Sepoy, he was granted benefits of 1st MACP (Naik grade) w.e.f. 22.03.2013. He was due for 2nd MACP (Hav Grade) w.e.f. 04.01.2019 after continuous service of eight years from the

next date he was granted 1st MACP, but since he submitted unwillingness certificate dated 10.12.2020 (Annexure CA-2) for further promotion, he was denied grant of 2nd MACP. After discharge from service, the applicant submitted complaint dated 21.10.2022 through CPGRAM to which reply was received on 14.12.2022 stating that since he submitted unwillingness certificate for further promotion, he is not entitled for 2nd MACP. Thereafter, applicant preferred first appeal to respondent No 3 on 11.03.2024 which was replied vide letter dated 18.03.2024 (Annexure CA-5) (impugned order). As far as grant of 2nd MACP to the applicant is concerned, respondents have submitted that the applicant is not entitled to 2nd MACP as he had submitted unwillingness certificate dated 10.12.2020 for promotion to next higher rank which made him ineligible for grant of 2nd MACP. Applicant has filed this O.A. for grant of 2nd MACP on the ground that various benches of the Armed Forces Tribunal have allowed grant of 2nd MACP on the same ground.

3. Submission of learned counsel for the applicant is that the applicant is entitled for grant of 2nd MACP after completion of 16 years service in terms of policy letters on the subject issued from time to time for grant of MACPs. Further submission of learned counsel for the applicant is that the respondents have denied grant of 2nd MACP even after submitting his grievance dated 11.03.2024 to the Officer-in-

Charge, Records which is not justified. His contention is that the three financial upgradations are based on length of service rendered i.e. 1st MACP on completion of 08 years service, 2nd MACP on completion of 16 years service and continuously remaining in 1st MACP grade pay for 08 years and 3rd MACP on completion of 24 years service and continuously remaining in 2nd MACP grade pay for 08 years preceding to date becoming eligible for grant of the above financial upgradations. In support of his submission for grant of 2nd MACP, the applicant has relied upon order dated 11.02.2021 passed by this Tribunal in O.A. No 330 of 2019, **No 9512259Y Ex Hav/AEC Vikram Singh Bhandari vs UOI & Ors**, AFT (RB) Kochi O.A. No. 170 of 2016, **Ex Hav Jubair P vs UOI & Ors**, order dated 03.01.2022 passed by the Hon'ble Apex Court in Civil Appeal No 7027-7028, **Union of India & Ors vs Manju Arora & Anr.**

4. 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. He further submitted that the applicant was granted 1st MACP 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 2nd MACP and that is the reason he was denied benefit of 2nd MACP in terms of policy on the subject. He pleaded for dismissal of O.A.

5. Heard learned counsel for the parties and perused the record.

6. Grievance of the applicant is that he was denied 2nd MACP even after he completed 16 years colour service. In this regard, a reference was made by learned counsel for the applicant that based on orders passed by various benches of the Armed Forces Tribunal, applicant is also entitled for grant of 2nd MACP.

7. 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 6th 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 1st financial upgradation under MACP

Scheme on completion of 08 years continuous service and on fulfilling other criteria.

8. It is observed that the applicant was granted 1st financial upgradation under MACP Scheme w.e.f. 22.03.2013 after completion of eight years continuous service in the rank of Sepoy. He was due for 2nd financial upgradation under MACP Scheme w.e.f. 22.03.2021 which was denied as he had submitted unwillingness certificate dated 10.12.2020 for further promotion. Respondent' contention is that after rendering unwillingness certificate, the applicant became ineligible for grant of 2nd MACP in terms of Para 21 of policy letter dated 13.06.2011. On perusal, we find that Para 21 prohibits further financial upgradation under MACP Scheme 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.

9. 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 and he had no objection, if he is superseded by his juniors for promotion. Hence, the applicant is not eligible for grant of second financial upgradation as he himself had rendered unwillingness certificate for further promotion. For convenience sake, extract of certificate dated 10.12.2020 rendered by the applicant is reproduced as under:-

“CERTIFICATE OF UNWILLINGNESS TO ACCEPT THE PROMOTION

1. I, No 15422960Y Rank & Trade L/Nk (AA) Name T Goutham Kumar am permanently unwilling to accept promotion to the rank of Subs Nk (AA).

2. I request that this certificate may be accepted. I understand the implications arising out of this request of mine. I would be superseded for promotion by my juniors who are fully qualified and that such supersession for promotion will not be a valid ground for premature discharge from services. I also understood that this certificate once furnished is irrevocable.

Dated: 10.12.2020

Sd/- x x x x x x
(signature of indl)

COUNTERSIGNED

Base Hospital
Delhi Cantt

Sd/- x x x x x x
(S Thareja)
Brig
Brig IC Adm & Cdr Tps
BH Delhi Cantt”

Dated: 10.12.2020

10. We also take note that O.A. No. 728 of 2020, **Chanchal Singh vs UOI & Ors** was referred by AFT (RB), Chandigarh to the Hon’ble Chairperson, AFT (PB), New Delhi. By order dated

01.11.2023 of the Hon'ble Chairperson, Larger Bench was constituted to decide the following controversy:-

“Whether financial upgradation is to be given after 08, 16 and 24 years of service to break the stagnation or any other conditions like unwillingness to go for promotion cases, involving inefficiency, grant of red ink entries and disciplinary proceedings are also to be looked into, at the stage”

11. The subject controversy has been decided by the Larger Bench by order dated 30.05.2024 keeping in view of various pronouncements of the Hon'ble Supreme Court and also in view of recent judgment dated 03.01.2022 passed in the case of ***Union of India vs Manju Aarora & Anr***, (2022) 1JT 65. Para 28 to 30 of Larger Bench order dated 30.05.2024 being relevant are reproduced as under:-

“28. In view of the above, the facts are clear that MACP Scheme was made effective w.e.f. 01.09.2008 as per Government of India resolution and MACP not being part of pay and DA, the Government notified it on different dates for implementation and in the case of MACP Scheme, it was decided to be given w.e.f. 01.09.2008. It was also made clear by Government of India, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) that Cadre Controlling Authority was to lay down guidelines and criteria for grant of financial up-gradation as per MACP Scheme. Further, it was clarified that passing of cadre test was an essential part for promotion and if any individual refused to undergo cadre test for promotion or unwillingness for promotion, he should not be entitled to MACP Scheme because MACP Scheme was for individuals who are victims of long stagnation in service and they were held entitled to financial up-gradation after a lapse of 8, 16 and 24 years of service. Similarly, disciplinary proceedings were essential to be looked into while passing order for grant of promotion and if an individual is held not entitled to promotion because of disciplinary proceedings, he was refused financial upgradation because of disciplinary proceedings against him as approved by Screening Committee duly notified as per Government of India policy.

29. In the light of the above, we decide the controversy that financial upgradation is to be given after 8, 16 and 24 years of service to break stagnation but if an individual gives unwillingness to undergo promotion cadre test or unwillingness for promotion or he is involved in any disciplinary proceedings or case involving inefficiency those are to be looked at separately by the competent authority and they were not entitled to financial up-gradation as per scheme of MACP.

30. Resultantly, the present reference is decided against the applicant to the extent that if financial up-gradation is to be given after 8, 16 and 24 years to break stagnation but if an individual refuses promotion or to undergo promotion cadre test, his case shall not be considered as financial stagnation for grant of MACP purpose and his case is to be dealt

with separately. Similarly, cases involving red ink entries and disciplinary proceedings are also looked into separately as per law/rules. Pending Miscellaneous Application (s), if any, shall also stand disposed of”

12. In view of the above, it is clear that while tendering his unwillingness, he accepted that he is foregoing further promotion which also debars grant of financial upgradation under MACP Scheme. That being so, the applicant having decided to give up his right for promotion by tendering his unwillingness, is also not entitled to the benefit of 2nd MACP.

13. Accordingly, the O.A. is **dismissed**.

14. No order as to costs.

15. Miscellaneous application(s), pending if any, stand disposed of.

(Vice Admiral Atul Kumar Jain)
Member (A)

Dated : 17.02.2025

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(Justice Anil Kumar)
Member (J)