

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

Original Application No. 149 of 2020

Friday, this the 30th day of July, 2021

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

No. 7779118N Hav (MP) Akhila Nand Mishra, son of Shri Rama Kant Mishra, 31 Armoured Division Provost Unit, C/O 56 APO.

.... Applicant

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

Versus

1. Union of India, through its Secretary, Min of Defence, South Block, New Delhi-110011.
2. The Chief of the Army Staff, Army Headquarters, Integrated Headquarters of Ministry of Defence, New Delhi-110011.
3. The Chief Record Officer, CMP Records, PIN-900493, C/O 56 APO.

... Respondents

Ld. Counsel for the: **Shri Arun Kumar Sahu**, Advocate.
Respondents.

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, whereby the applicant has sought following reliefs:-

- (I) Issue/pass an order or direction directing the Respondents to grant of applicant's due pay and allowances with effect from the effected date well known to the respondents.*
- (II) Pass an order to quash the order dated 11.12.2019 passed by the respondents on account of denial of the due pay and allowances.*
- (III) Any other relief as considered proper by this Hon'ble Tribunal be awarded in favour of the applicant.*
- (IV) Cost of the appeal be awarded to the applicant.*

2. Brief facts of the case are that applicant was enrolled in Indian Army on 02.09.1995 and in due course of time he was promoted to the rank of Havildar on 01.07.2014. Grievance of the applicant is that he is getting less pay and allowances than Havildar Siyaram Chaurasia who was enrolled on 25.10.1995 and promoted to the rank of Havildar on 01.07.2014 i.e. the date on which applicant was promoted. While applicant was/is in receipt of less pay and allowances than his colleagues, he submitted a representation dated 06.05.2019 but the respondents vide letter dated 11.12.2019 addressed to Chief Record Officer have denied the same on the ground of MACP, hence this O.A.

3. Submission of learned counsel for the applicant is that applicant, who is senior to his colleague Hav Chaurasia, should not get less pay and allowances than his junior. He further submitted that applicant was enrolled in the Army on 02.09.1995

and his junior Hav Chaurasia was enrolled in the Army on 25.10.1995, which makes it clear that applicant is senior to his colleague. His further submission is that applicant and his colleague was promoted to the rank of Havildar w.e.f. 01.07.2014, therefore both are of same group and seniority and das per rule in vogue their pay should have been equal but it is a fact that Hav Chaurasia is getting more pay and allowances than applicant.

4. On the other hand learned counsel for the respondents submitted that though applicant was enrolled prior to induction of his colleague Hav Chaurasia but since applicant was granted benefits of MACP on 02.09.2005 and his colleague Hav Chaurasia got benefits of MACP w.e.f. 25.10.2005, i.e. after an increment was granted on 01.10.2005, therefore, Hav Chaurasia is getting more pay and allowances than applicant. He pleaded for dismissal of O.A.

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

6. It is not disputed that applicant was enrolled in the Army prior to enrolment of his colleague Hav Chaurasia. It is also not disputed that applicant was granted MACP on 02.09.2005 and his colleague Hav Chaurasia got benefits of MACP w.e.f. 25.10.2005 after addition of an increment on 01.10.2005, thereby granting more pay and allowances to Hav Chaurasia than the applicant which seems to be illogical as communicated vide letter dated 11.12.2019 (Annexure-1) extract of which is reproduced as under:-

“The pay details of No 7779118N Hav Akhila Nand Mishra (Senior) has been compared with that of No 7779133H Hav Siyaram Chaurasia (Junior) and it is observed that the anomalies in the pay fixation is purely due to grant of MACP. The senior was granted MACP w.e.f. 01.09.2005 and pay fixed @ 3850 whereas, junior was granted MACP w.e.f. 25.10.2005 after annual increment of 10/2005 hence pay fixed @ 3935. As per the MACP guidelines issued by GOI, MOD, no stepping in the pay band or grade pay would be admissible with regard to junior getting more pay than the senior on account of pay fixation under MACP Scheme. The MACP envisages merely placement in the immediate next higher grade pay in the hierarchy of the recommended revised pay bands and grade pay as given in SAI 1/S/2008.”

7. From the above, we find that the defence set-up by the respondents while granting more pay and allowances to junior with regard to senior on account of grant of MACP is not sustainable in the eyes of law since both the individuals were promoted to the post of Havildar on same date i.e. 01.07.2014 and are equally placed. It is well settled proposition of law that equals cannot be treated unequally and in case equals are treated unequally, it shall amount to discrimination and be hit by Article 14 of the Constitution. (vide 1990 (2) SCC 715, **Direct Recruit Class II Engineers vs. State of Maharashtra** (para-13), 1997 (1) SCC 701, **SC & ST Officers Welfare Association vs. State of U.P.** (paras 4 and 10), 1995 Supp (2) SCC 246, **K. Ravindranath vs. State of Karnataka** (paras 10 and 12) and 1999 (4) SCC 756I, **Kamlakar & ors vs. Union of India** (para-12).

8. In view of the above, respondents are directed to fix pay and allowances of the applicant in such a way that his junior may not get more pay and allowances than applicant. Respondents are further directed to fix and pay monetary benefits to applicant within two months

from the date of production of a certified copy of this order. Default will invite interest @ 8% p.a.

9. The O.A. is liable to be allowed, hence **allowed**.

10. No order as to costs.

11. Miscellaneous applications, pending if any, stand disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated :30th July 2021
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