

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No 240 of 2021**Thursday, this the 22nd day of July, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)No. 15689187-N, Ex-LNK, Manoj Kumar
S/o Shri Sukh Ram Singh
R/o Village – Ghariya, PO – Manpur,
Tehsil – Bulandshahr,
District – Bulandshahr (UP) Pin – 245801

..... Applicant

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

Versus

1. Union of India, through its Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence (Army), South Block, New Delhi-110011.
3. The Officer-in-Charge Records, Signals Records Pin 908770, C/o 56 APO.
4. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad (Prayagraj).
5. Commanding Officer, 769 (I) AD Bde Sig Coy, PIN-916769, C/o 56 APO.

..... Respondents

Ld. Counsel for the Respondents : **Dr. Gyan Singh**,
Central Govt 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:-

- “(a) To issue pass an order or directions to the respondents to grant the benefit of Second MACPS on completion of 17

years of service which was due on 08.10.2019 with all the consequential benefits alongwith @ 12% interest in light of Hon'ble Tribunal judgments.

- (b) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstance of the case is also granted alongwith cost of the OA.”

2. The factual matrix on record is that the applicant was enrolled in the Army on 08.10.2003 as a Sepoy entry and was discharged from service on 31.10.2020 after rendering more than 17 years of service. He was granted 1st Modified Assured Career Progression (MACP) on 08.10.2011 on completion of 8 years of continuous service but after completion of 16 years of service, applicant was not granted MACP-II which was due on 08.10.2019. The applicant is in receipt of service pension giving the benefit of MACP-I. The applicant being aggrieved, preferred a representation dated 02.03.2020 through proper channel to respondent no. 5 which was further forwarded to Liaison Cell Signals Records. Subsequently, respondent no. 4 sent a letter dated 07.03.2020 to PAO (OR) Signals, Jabalpur and in reply vide letter dated 16.04.2020, name of applicant was found at serial No. 28 of ibid letter for grant of MACP-II where in remarks column it was mentioned that “DO-II regarding MACPS mentioned observation has not been found in Dolphin, send through regular batch”. Thereafter, respondent no. 3 sent a letter dated 20.05.2020 to respondent no. 5 mentioning the remarks for grant of MACP-II to the applicant, thereby respondent no. 5 sent a letter dated 05.10.2020 to the Signals Records requesting to grant second MACP to the applicant w.e.f. 08.10.2019. Since, applicant was on verge of discharge from service

on 31.10.2020, case for grant of MACP-II could not be processed properly and thus, applicant was not granted benefit of MACP-II and was discharged from service giving the benefit of MACP-I only. Now the applicant has filed present original application for award of 2nd MACP 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 1st MACP but after completion of 16 years of service he has not been awarded benefit of 2nd MACP as applicable as per Govt of India letter May 2011 as the applicant retired from service after completion of 17 years of service. Learned counsel for the applicant further placed reliance on the judgment of AFT (RB) Lucknow in O.A. No. 153 of 2016, ***Ex Havildar Vrajesh Kumar Shankhdhar vs. Union of India & Ors***, decided on 24.01.2018 and AFT (RB) Kochi in O.A. No.170 of 2016, ***Ex Hav Zubair P vs. Union of India*** and pleaded that applicant should also be given benefit of 2nd MACP being a similar case.

4. 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 up-gradations 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.”

5. Learned counsel for the respondents further submitted that applicant was enrolled in the Army as a Sepoy entry and was granted 1st Modified Assured Career Progression (MACP) on 08.10.2011 on completion of 8 years of continuous service. He further submitted that applicant was screened for grant of MACP-II (Hav Grade) on completion of 16 years of service from the date of enrolment by Signals Records and it was found that he had rendered permanent unwillingness certificate for further promotion/promotion cadre/course as forwarded vide 33 Corps Operating Signal Regiment letter dated 18.06.2016 (as recorded in applicant seniority roll). He further submitted that it is pertinent to mention here that passing promotion cadre is mandatory for promotion. As such unwilling to attend promotion cadre amount to unwillingness/refusal to promotion and as per Para 21 of IHQ of Mod (Army) letter dated 13.11.2011, ***“If an individual refuses promotion, MACP will also be denied. If an individual refuse 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 individual states he is unwilling.*”**

Since, the applicant has rendered permanent unwillingness certificate for further promotion/promotion cadre/course, hence, he was not eligible for further MACP benefits. Therefore, MACP-II (Havildar Grade) due on 08.10.2019 was not granted to the applicant.

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

7. We find that 769 (I) AD Bde Sig Coy sent a letter dated 02.03.2020 to Signals Records to grant second MACP to the applicant w.e.f. 08.10.2019 and also wrote another letter dated 05.10.2020 addressed to Signals Records for rectification of observation raised by PAO (OR) Signals that '*DO-II regarding MACPs mentioned in Observation has not been found in Dolphin, send through regular batch*' shows that case for grant of MACP-II was in process by the respondents but in the meantime, applicant being due for discharge from service on 31.10.2020 could not get the benefit of MACP-II due to incomplete documentation by the respondents. Hence, the plea of the respondents that applicant submitted his unwillingness certificate to attend promotion cadre is not sustainable as also there is no proof/paper filed by the respondents alongwith counter affidavit to prove unwillingness of applicant to attend promotion cadre, hence, in the absence of any documentary proof of unwillingness to attend promotion cadre, applicant is eligible for MACP-II benefit from 08.10.2019.

8. The impugned order passed by the respondents is set aside. Original Application is disposed of with the direction to the respondents to consider the claim of the applicant for grant of benefit

of Modified Assured Career Progression Scheme (MACP-II) with effect from 08.10.2019 and grant all consequential benefits to the applicant. The respondents shall take appropriate decision expeditiously, preferably within four months from the date of receipt of certified copy of this order. Delay shall invite interest @ 8% per annum till actual payment.

9. No order as to costs.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: July, 2021

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