

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No 390 of 2020**Friday, this the 23rd day of July, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)No. 1571039P Ex Nk (ACP-I) Mahesh Prasad Mishra
S/o Prem Bhushan Mishra
R/o Vill – Pune Tula Ram, Post – Kakarahiya,
District – Sultanpur (UP)

..... Applicant

Ld. Counsel for the Applicant: **Shri Devesh Mishra**, Advocate

Versus

1. The Union of India, through the Secretary, Ministry of Defence (Army), New Delhi-110011.
2. The Chief of Army Staff, IHQ of MoD (Army), Sena Bhawan, New Delhi-110011.
3. The Officer-in-Charge Bombay Engineer Group, Kirkee, Pune-411003.
4. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad.

..... Respondents

Ld. Counsel for the Respondents : **Shri R.C. Shukla**,
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 decide the applicant's representation dated 11.11.2019 for re-fixation of applicant's pension as per MACP-II.

- B. To issue/pass an order or directions to the respondents to consider and re-fix the pension of the applicant as per MACP-II and pay arrears of difference in salary from due date and within a stipulated time.
- C. To issue/pass an order or directions to the respondents to consider and re-fix pension and other retiral dues of the applicant treating his salary as the time of retirement as per MACP-II and pay arrears of difference in pension from 30.04.2008 and retiral dues along with interest and within a stipulated time.
- D. To issue/pass any other order or direction as this Hon'ble Tribunal may deem just, fit and proper under the circumstances of the case in favour of the applicant.
- E. To allow this original application with costs."

2. The factual matrix on record is that the applicant was enrolled in the Army on 03.04.1984 and was discharged from service on 30.04.2008 after completion of terms of engagement under Rule 13 (3) III (i) of Army Rules, 1954 after rendering more than 24 years of service. The applicant is in receipt of service pension w.e.f. 01.05.2008 in the pay scale of Nk (ACP-I) which has been further revised from time to time vide PPO dated 16.04.2008. He was granted ACP-I on completion of 8 years of continuous service. Afterwards, applicant passed Map Reading-1(MR-1) course in the month of November 2002 but has not been granted benefit of ACP-II. Now the applicant has filed present original application for award of ACP-II.

3. Learned counsel for the applicant submitted that after completion of 8 years of service, applicant was granted benefit of

ACP-I but after passing Map Reading-1 (MR-1) course in the month of November 2002, he has not been granted benefit of ACP-II. Learned counsel for the applicant further submitted that after passing of MR-1 course in 2002, applicant was in service till the date of discharge i.e. 30.04.2008 and during such a long period of service, no opportunity was given to him for Havildar course. Being aggrieved for non grant of ACP-II, applicant preferred a representation dated 11.11.2019 before respondent no. 3 but to no avail. Thereafter, he submitted another representation dated 22.11.2019 but no reply has been received till the date of filing of Original Application. Learned counsel for the applicant placed reliance on the judgment of AFT (RB) Kochi in O.A. No. 219 of 2016, **Ex Sub Paul Varghese vs. Union of India & Ors**, decided on 01.08.2017 and Govt. of India letter dated 30.05.2011 and pleaded that applicant should also be given benefit of ACP-II 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 ACP-I on completion of 8 years of continuous service. He further submitted that applicant has rendered a permanent unwilling certificate for 'H' (Havildar) promotion course duly signed by the petitioner and countersigned by the Officiating Commanding Officer, 102 Engineer Regiment on 24.06.2001, which is annexed as Annexure R-2 to counter affidavit. Hence, once an individual gives permanent unwilling certificate for a course, he is further not nominated for any promotion course in future. Since, MR-1 is just a qualifying criteria for nomination of Havildar promotion course which the applicant has attained after rendering permanent unwilling certificate is of no use. Accordingly, 'if an individual refuses promotion, MACP will also be denied'.

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 promotion course is mandatory for promotion as such unwillingness to attend promotion cadre amounts to unwillingness/refusal to promotion. Since, the applicant had given permanent unwillingness certificate, he is not eligible for grant of benefit of MACP-II.

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

8. We find that applicant has not passed promotion cadre of Havildar but rendered his unwillingness in writing which debarred him from further promotion being a mandatory requirement for grant of benefit of ACP-II as per Govt. policy letters dated 13.06.2011 and 11.07.2018. Hence, we are of the view that claim of applicant for grant of benefit of ACP-II without fulfilling mandatory criteria is not sustainable and have rightly been rejected by the respondents which need no interference.

9. In view of above, O.A. has no merit, deserves to be dismissed and is accordingly **dismissed**.

10. 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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