

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No 6 of 2021**Monday, this the 12th day of July, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)No. 13770920-F Ex Rfn Ajaruddin Ansari
S/o Shri Mainuddin Ansari
R/o Village – Padari Panday,
TO – Bhatani, Tehsil – Salempur,
District – Deoria (UP) PIN – 274701

..... Applicant

Ld. Counsel for the Applicant: **Shri Manoj Kumar Awasthi &**
Shri Anshuman Srivastava, 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, J & K Rifles, Jabalpur, C/o 56 APO.
4. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad (Prayagraj).
5. Commanding Officer, 18 JAK RIF, C/o 56 APO.

..... Respondents

Ld. Counsel for the Respondents : **Shri Pushendra Mishra,**
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 representation dated 21.05.2020 preferred by

the applicant, which is attached as Annexure No. 1 to this original Application.

- (b) To issue pass an order or directions to the respondents to grant the benefit of Second MACPS on completion of 16 years of service on 01.05.2019 with all the consequential benefits alongwith @ 12% interest in light of Hon'ble Tribunal judgments.
- (c) 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 02.05.2003 as a Sepoy entry. He was granted 1st Modified Assured Career Progression (MACP) on 02.05.2011 on completion of 8 years of continuous service. The applicant was discharged from service on 31.05.2020 under Rule 13 (3) III (i) of Army Rules 1954 after rendering 17 years & 01 month of service and was granted service pension @ Rs. 20,475/- per month vide PPO dated 11.05.2020. 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 upgradations 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 02.05.2011 on completion of 8 years of continuous service. He further submitted that applicant was detailed to attend Rifleman/Lance Naik to Naik promotion cadre conducted in October 2017 (1st attempt), in July 2018 (2nd attempt) and in July 2019 (3rd attempt), when he was posted

with 52 Rashtriya Rifles, however, he rendered his unwillingness for said promotion cadre in all three chances.

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 unwillingness certificate for the said promotion cadre in all three chances given to him, he was not eligible for grant of 2nd MACP.

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

8. We find that applicant has not passed promotion cadre from L/Nk to Naik after being given three chances to attend promotion cadre but rendered his unwillingness in writing which debarred him from further promotion being a mandatory requirement for grant of benefit of MACP as per Govt. policy letters dated 13.06.2011 and 11.07.2018. Hence, we are of the view that his claim for grant of 2nd MACP 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 merits, 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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