

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No 850 of 2021**Thursday, this the 7<sup>th</sup> day of July, 2022**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**No. 13956455-Y Ex Hav Sharafat Minya  
S/o Shri Pyare Minya  
R/o Mohalla – Malukpur, Near Police Chowki,  
Dist – Bareilly – 243003 (UP)

..... Applicant

Ld. Counsel for the Applicant: **Shri P.K. Shukla**, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence (Army), South Block, New Delhi.
2. Chief of Army Staff, Integrated Headquarters, Ministry of Defence, South Block-III, New Delhi – 110011.
3. OIC Records, Army Medical Corps, PIN-900450, C/o 56 APO.
4. PCDA (Pension), Draupadighat, Allahabad (UP) – 211014.

..... Respondents

Ld. Counsel for the Respondents : **Shri Shyam Singh**,  
Central Govt Counsel**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 for the following reliefs:-

“(A) To quash or set aside the respondents letters dated 13.03.2021 (Annexure A-1 of OA).

(B) To issue order or directions to the respondents to grant service pension for the rank of Naib Subedar (MACP) to

the applicant with effect from 01.01.2008 (Date of discharge : 31.12.2007) with all consequential benefits.

(C) Any other relief as considered proper by the Hon'ble Tribunal be awarded in favour of the applicant.

(D) Allow the instant OA with cost."

2. The factual matrix on record is that the applicant was enrolled in the Army on 20.12.1983 and was discharged from service on 31.12.2007 (AN) under Rule 13 (3) III (i) of Army Rules, 1954 on completion of service limit/age limit after rendering 24 years and 11 days of service (including 32 days of NQS). Grievance of the applicant is that he has been denied benefit of Modified Assured Career Progression Scheme (MACP) of Nb Sub grade. The applicant submitted a representation dated 20.02.2021 which was rejected by the respondents vide letter dated 13.03.2021. Being aggrieved, the applicant has filed present original application for grant of benefit of 3<sup>rd</sup> MACP (Nb Sub Grade)

3. Learned counsel for the applicant submitted that applicant was enrolled in the Army on 20.12.1983 and was discharged from service on 31.12.2007 (AN) after rendering 24 years and 11 days of service in the rank of Havildar. The applicant is entitled for the pension to the rank of MACP Nb Sub Grade-III from the date of his discharge from service. As per Regulation 18 of Pension Regulations for the Army, 2008 (Part-1) shortfall in granting promotion to the rank of MACP Nb Sub Grade-III is also liable to be condoned. As such, he is entitled to get the benefits of condonation of shortfall in MACP Nb Sub Grade-III. As per Govt. of India, Ministry of Defence letter dated 30.05.2011,

financial up-gradation of next rank at an interval of 8, 16 and 24 years of continuous regular service or 8 years of regular service in the same grade pay, will be granted. Since, the applicant was discharged from service on completion of 24 years of service he is entitled to get 3<sup>rd</sup> MACP of Nb Sub Grade. He placed reliance on the judgment of AFT (RB), Lucknow in T.A. No. 349 of 2010, **Ramayan Mishra vs. Union of India & Ors**, decided on 10.10.2018 and O.A. No. 724 of 2021, **Vinod Kumar Tiwari vs. Union of India & Ors**, decided on 02.03.2022 and pleaded to grant benefit of MACP-III to the applicant also.

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 on 20.12.1983 and was discharged from service on 31.12.2007 (AN) under Rule 13 (3) III (i) of Army Rules, 1954 on completion of service limit/age limit after rendering 23 years, 11 months and 10 days of service (excluding 32 days of NQS). The applicant was promoted to the rank of Naik w.e.f. 01.06.2000 and Havildar w.e.f. 01.06.2004. The applicant was granted service pension for 24 years in the rank of Havildar. As per Ministry of Defence letter dated 30.05.2011, MACP scheme was introduced granting three financial up-gradations to JCOs/OR at an interval of 8, 16 and 24 years of continuous regular service or whenever a person spends 8 years continuously in the same grade pay/rank. The applicant was promoted to the rank of Havildar on 01.06.2004 and discharged from service on 31.12.2007. Since, the applicant has neither completed 24 years of continuous service due to 32 days of Non Qualifying Service nor 08 years of regular service in the rank of Havildar at the time of discharge from service, the applicant is not entitled to get benefit of 3<sup>rd</sup> MACP of Naib Subedar grade due to policy constraint.

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

7. We find that MACP scheme is effective w.e.f. 01.01.2006 for grant of three financial upgradations at intervals of 8, 16 and 24 years of service. In the present case, applicant was discharged from service in the rank of Havildar on completion of terms of engagement of

service after rendering 24 years and 11 days of service in which there was NQS of 32 days on account of absent without leave for which applicant was not paid pay and allowances for the period of 32 days absence.

8. So far as prayer of the applicant for condonation of short fall of 20 days in order to become eligible to get MACP-III benefit after rendering 24 years of service is concerned, the Court, keeping in view the provisions of para 18 of Pension Regulations for the Army, Part-1 (2008) for calculating qualifying service are equally applicable for grant of MACP, we find no impediment in computing his qualifying service as 24 years for the said purpose of granting 3<sup>rd</sup> MACP (Nb Sub Grade), as well. Hence, as per provisions of para 18 of Pension Regulations for the Army, Part-1 (2008), IHQ of MoD (Army) letters No. B/33513/ACP/AG/PS-2(c) dated 13 June 2011 and even No. dated 03.06.2016, we are of the view to condone shortfall of 20 days NQS. The applicant's total qualifying service as per respondents is 23 years, 11 months and 10 days, hence, 20 days NQS is condoned and the applicant is held entitled to get the benefit of MACP-III on the date he has completed 24 years of service/discharged from service.

9. In the result, Original Application is allowed. The impugned order, if any, is set aside. The respondents are directed to consider the claim of the applicant for grant of notional promotion to the rank of Naib Subedar giving the benefit of MACP-III (Naib Subedar grade) from the next date of discharge from service, i.e. w.e.f. 01.01.2008 with all consequential/pensionary benefits of the rank of Naib Subedar

and issue a Corrigendum PPO accordingly. The Respondents are directed to comply with the order within a period of four months from the date of receipt of certified copy of the order. Default will invite interest @ 8% per annum till actual payment.

10. No order as to costs.

11. Pending Misc. Application(s), if any, shall be treated to have been disposed off.

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

Dated: July, 2022  
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