

Court No. 1
RESERVED

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No 438 of 2020

Monday, this the 1st day of March, 2021

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

No. JC-753805L Ex. Subedar/Clk (SD) Kamlesh Rai
S/o Shri Lalta Prasad Rai
R/o House No. 188, Senani Vihar (Behind APS Academy)
Raibareilly Road, Telibagh, District – Lucknow (UP)

..... Applicant

Ld. Counsel for the Applicant: **Shri Santosh Singh &**
Shri Shashank Pandey, Advocate

Versus

1. Union of India, through the Secretary, Ministry of Defence, South Block, New Delhi.
2. The Chief of Army Staff, Integrated Headquarter, Ministry of Defence, Sena Bhawan, South Block, New Delhi.
3. The PAO (OR) EME, Secunderabad, Telangana – 500021.
4. Officer-in-Charge, EME Records PIN-900453 C/o 56 APO, Secunderabad, Telangana – 500021.
5. DGIS (MISO/MMS) General Staff Branch, Integrated Headquarter, Ministry of Defence, Sena Bhawan, South Block, New Delhi.

..... 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. The Hon'ble Tribunal may kindly be pleased to direct the respondents for grant the 3rd MACP to the rank of

Subedar Major w.e.f. 11.01.2009, with full dignity and with all consequential benefits.

- B. To pay the difference amount of 11.01.2009 to 31.01.2015 till retirement of the applicant along with arrear with 18% interest from the date of same was due.
- C. The Hon'ble Tribunal may kindly be pleased to direct the respondents to pay the difference amount of pension of the applicant w.e.f. 01.02.2015 till actual date of payment along with arrear and pay the revise payment of the applicant for the rank of Subedar Major.
- D. To award the cost of the petition in favour of the applicant from the respondents.
- E. Any other or further orders which this Hon'ble Tribunal deems fit and proper under the circumstances be granted to the applicant."

2. The factual matrix on record is that the applicant was enrolled in the Army on 11.01.1985 as a Sepoy entry and was discharged from service on 31.01.2015 (AN) after rendering 30 years of service on completion of terms of engagement. Applicant was selected as Direct Entry Graduate Havildar w.e.f. 07.02.1987 and substantive rank of Havildar w.e.f. 01.03. 1990, Naib Subedar w.e.f. 01.12.1998 and Subedar w.e.f. 01.12.2004. Part II Order dated 11.05.2010 for grant of 3rd MACP to the rank of Subedar Major was published by EME Records w.e.f. 11.01.2009 which was later cancelled. After retirement PPO dated 05.09.2014 was issued to the applicant but grade pay of Subedar Major was not granted to him. The applicant moved a representation dated 30.01.2015 prior to his retirement for grant of 3rd MACP of Subedar Major but no reply received from the respondents.

The applicant again moved representations dated 03.06.2017 and 20.12.2017, which were replied by the respondents vide letter dated 31.01.2018 stating therein that action is in process. On 30.04.2018, applicant again moved an application with regard to his grievance but no action has been taken by the respondents. Being aggrieved, the applicant has filed present original application for award of 3rd MACP of Subedar Major.

3. Learned counsel for the applicant submitted that after completion of 8 years of service, applicant is eligible for 3rd MCAP of Subedar Major and he should be granted benefit accordingly. He placed reliance on judgment of the AFT (Principal Bench) New Delhi in the case of **Sub Clk Manna Lal Verma vs. Union of India** in O.A. No. 506 of 2014, decided on 25.05.2015 and pleaded that applicant should also be given benefit of 3rd 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 promoted to the rank of direct entry paid acting Havildar w.e.f. 07.02.1987 and granted substantive Havildar rank w.e.f. 01.03.1990. Part II Order with regard to 3rd MACP was erroneously published vide EME Records Part II Order No. 1/3484/0001/2017 dated 25.10.2017 which was later cancelled vide part II Order No. 1/2031/0001/2018 dated 31.05.2018.

6. Learned counsel for the respondents also stated that as per Para 24 (e) Illustration III of Army Headquarters letter dated 13.06.2011 “**remustered Havs who joins in direct entry grade of Sep. Since regular service for the purpose of MACP shall commence from the date of joining of a post in direct entry grade (i.e. Sep), such re-mustered Havs would deem to have earned a promotion. Hence they would be entitled to the balance two MACP, if however, they have availed MACP of Nk or promoted to select Nk prior to re-mustering as Hav they would be entitled to only the third MACP. Similar provisions would apply to a re-mustered JCO.**”

In the instant case, since the applicant had already got two promotions i.e. Naib Subedar and Subedar after re-mustering to Havildar rank, hence, in accordance with ibid policy on the subject, the applicant was not granted the benefit of financial upgradation under the MACP Scheme for 3rd MACP of Subedar Major grade.

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

8. We have considered the applicant's case in view of above guiding factors and we hold that the claim of applicant for grant of 3rd MACP to Subedar Major grade has rightly been rejected by the respondents which needs no interference. Resultantly, O.A. is **dismissed**.

9. No order as to costs.

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

Dated: March, 2021

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