

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No 724 of 2021**

Wednesday, this the 02nd day of March, 2022

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

No. 13957008F Ex Hav (Hony Nb Sub) Vinod Kumar Tiwari, S/o Shri Trijugi Narayan Tiwari, R/o House No 594 KA/994 Vidya Nagar, Neelmatha, Malak Road, PO-Dilkusha, Lucknow, P.S.-Cantt, Lucknow (UP)-226002.

..... Applicant

Ld. Counsel for the Applicant: **Shri Vijay Kumar Pandey**, Advocate

Versus

1. Union of India through Secretary, Ministry of Defence, South Block, RK Puram, New Delhi-110011.
2. Dte Gen of Med Services (Army), Adjutant General's Branch, Integrated HQ of MoD (Army), 'L' Block, New Delhi-110001.
3. OIC Records, Record AMC, PIN-900450, C/o 56 APO.
4. Principal Controller of Defence Accounts (P), Draupadi Ghat, Allahabad (UP)-211014.

..... Respondents

Ld. Counsel for the Respondents : **Dr. Gyan 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:-

- “(i) That this Hon'ble Tribunal may kindly be pleased to set aside the impugned rejection orders dated 27.09.2021, 29.04.2021, 03.04.2021 passed by opp party No 2, as contained in annexure No 1, 2 & 3 to this original application, and condoned the 06 days shortfall in completing 24 years qualifying service, and grant the pension to the rank of MACP Nb Sub Grade-III to the applicant w.e.f. 31.01.2008, and provide the interest on the aforesaid delayed amount of pension with 18% p.a.

since due date of actual date of payment, in the interest of justice.

- (ii) That this Hon'ble Tribunal may kindly be awarded the cost Rs 20,20,000/- (Rupees twenty lac and Twenty Thousand) to the applicant against the opposite parties.
- (iii) That this Hon'ble Tribunal may be pleased to pass any other order or direction which this Hon'ble Court may deem just and proper be passed in favour of the applicant."

2. The factual matrix on record is that the applicant was enrolled in the Army on 01.02.1984 and was discharged from service on 31.01.2008 (AN) under the provisions of Rule 13 (3) III (i) of Army Rules, 1954 after rendering 24 years of service (including 06 days non qualifying service). The applicant represented his case for grant of 3rd MACP (Nb Sub) to AMC Records vide letter dated 22.04.2021 which was rejected vide impugned letter dated 29.04.2021 on the ground that there is 06 days non qualifying service as applicant has served 23 years 11 months and 24 days of qualifying service. Being aggrieved, the applicant has filed present original application.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Army on 01.02.1984 and was discharged from service on 31.01.2008 (AN) in the rank of Havildar after rendering 24 years of service. Accordingly, he is in receipt of full service pension for the rank of Havildar. As per 6th CPC, MACP scheme is applicable for grant of three financial upgradations at intervals of 8, 16 and 24 years of continuous service vide IHQ of MoD (Army) letter dated 30.05.2011 and is effective w.e.f. 01.01.2006. The applicant after rendering 24 years of service in the rank of Havildar is entitled for the benefit of MACP-III. The applicant represented his case for grant of 3rd MACP (Nb Sub) to AMC Records vide letter dated 22.04.2021 which was

rejected vide impugned letter dated 29.04.2021 on the ground that there is 06 days non qualifying service in 24 years as applicant has served 23 years 11 months and 24 days of qualifying service.

4. Learned counsel for the applicant further submitted that applicant was not paid pay and allowances for the period of 06 days overstayed of leave for the period from 10.03.1999 to 15.03.1999, hence, period of 06 days non qualifying service (NQS) should be condoned under the provisions of para 18 (a) and 49 of Pension Regulations for the Army-2008 (Part-I) and period of absence to be added in his service treating his total service 24 years as rendered by him. Denial of benefit of 3rd MACP because of shortfall of 06 days on account of NQS would tantamount to a double jeopardy as he was not paid pay and allowances for that period which is violation of Article 20 of the Constitution of India. The learned counsel pleaded for grant of 3rd MACP to the applicant.

5. Learned counsel for the respondents submitted that applicant was enrolled in the Army on 01.02.1984 and was discharged from service on 31.01.2008 (AN) under the provisions of Rule 13 (3) III (i) of Army Rules, 1954 after rendering 23 years, 11 months and 24 days of service (excluding 06 days NQS). He was granted service pension in the rank of Havildar vide PPO No S/040932/2007. The applicant preferred an application dated 22.04.2021 to AMC Records for grant of 3rd MACP. Accordingly, AMC Records vide letter dated 29.04.2021 replied as under:-

- “(a) Not completed 24 years qualifying service due to 06 days NQS (OSL from 10 Mar 1999 to 15 Mar 1999).*
- (b) An indl who enrolled on 1st day of month and retired on last day of previous month just after completing 24 years of*

service who is not eligible for MACP-III (Nb Sub Grade) as you enrolled on 01 Feb 1984 and retired on 31 Jan 2008.

(c) You did not complete 08 years qualifying service in the rank of Hav as you were promoted to the rank of Hav on 03 Nov 2003 and retired on 31 Jan 2008.”

6. Learned counsel for the respondents further 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 which was later made effective w.e.f. 01.01.2006 by the judgment of the Hon'ble Apex Court. As per Govt. of India, Ministry of Defence letter dated 30.05.2011 as amended vide Govt. of India, Ministry of Defence letter dated 25.07.2018, MACP-III is granted to those who have either completed eight years of service in the rank of Havildar or have completed 24 years of qualifying service. Since the applicant at the time of discharge from service neither completed 8 years of service in the rank of Havildar nor completed 24 years of qualifying service, he is not entitled for grant of MCP-III as per existing policy.

7. Learned counsel for the respondents also submitted that Para 21 and Para 122 (a) (iii) of Pension Regulations for the Army-2008 (Part-1) stipulated that any period of unauthorised absence, unless pay and allowances are admitted for the period of absence, shall not qualify for pension or gratuity. In the instance case, the pay and allowances for the period 10.03.1999 to 15.03.1999 being unauthorised period of absence were not regularised and were not paid to him for the period of absence. The same was counted as NQS being unauthorised absence. He also submitted that there is no provision for condonation of service for grant of MACP. He pleaded for dismissal of O.A.

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

9. 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 of service in which there was NQS of 06 days on account of overstaying of leave and applicant was not paid pay and allowances for that period.

10. So far as prayer of the applicant for condonation of short fall of 06 days in order to become eligible to get MACP-III benefit after rendering 24 years of service is concerned, we find that keeping in view the provisions of para 18 of Pension Regulations for the Army-2008 (Part-I) the applicant is entitled to condonation of shortfall of 06 days NQS. For convenience sake, the aforesaid para is reproduced as under:

“18. (a) In calculating the length of qualifying service, fraction of a year equal to three months and above but less than 6 months shall be treated as a completed one half year and reckoned as qualifying service. The period of nine months and above would, therefore, be two half years. This shall however not be applicable for completing minimum qualifying service for pensionary awards.

(b) If the total period of qualifying service of an individual exceeds completed years by 6 months or more, the amount of his pension/gratuity will be computed for the completed years plus one half year of his qualifying service including weightage, if any, admissible under these Regulations.”

11. Apropos above, the aforesaid provisions for calculating qualifying service are equally applicable for grant of MACP as we find

no impediment in computing qualifying service as 24 years for granting 3rd MACP.

12. During the course of hearing learned counsel for the applicant invited our attention to order dated 23.11.2017 passed by AFT, Regional Bench, Chennai in O.A. No. 108 of 2016, **Ex Hav M Sankarraj vs Union of India & Ors** and pleaded to condone shortfall of 06 days NQS to earn 3rd MACP. We have perused the aforesaid order and we find that in view of order dated 23.11.2017 (supra) shortfall of 06 days NQS may be condoned.

13. Though para 18 of the Pension Regulations for the Army-2008 (Part-I) is applicable for condoning shortfall with regard to pensionary benefits, this reasoning appeals to us in respect of shortfall of 06 days for earning 3rd MACP may therefore, be condoned while granting MACP-III to the applicant.

14. Hence, as per provisions of para 18 of Pension Regulations for the Army-2008 (Part-I), 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 that shortfall of 06 days NQS is condonable for grant of 3rd MACP. The applicant's total qualifying service as per respondents is 23 years, 11 months and 24 days, hence, 06 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, i.e. 31.01.2008.

15. In the result, Original Application is **allowed**. The impugned orders passed by the respondents are 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 date of discharge from service with all consequential/pensionary benefits of the rank of Naib Subedar and issue a Corrigendum PPO accordingly. The Respondents are further directed to comply with the order within a period of four months from the date of receipt of a certified copy of this order. Default will invite interest @ 8% per annum till actual payment.

16. No order as to costs.

17. 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: 02.03.2022

rathore