

**Court No. 1**  
**RESERVED**

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**

**Original Application No 857of 2021**

Thursday, this the 31<sup>st</sup> day of March, 2022

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

No. 14594821-K Sep Lalan Ji Mishra  
S/o Shri (Late) Jaganath Mishra,  
R/o Village & Post – Sonwani, Dist : Ballia (UP) – 277402  
..... Applicant

Ld. Counsel for the Applicant: **Shri Shailendra Kumar Singh**, Advocate

Versus

1. Union of India, through the Secretary, Govt. of India, Ministry of Defence (Army), South Block, New Delhi-110011.
2. Union of India, through the Secretary, Govt. of India, Ministry of Personnel Public Grievances & Pensions, Dept of Personnel and Training, North Block, New Delhi – 110001.
3. Chief of the Army Staff, IHQ of MoD (Army), Post - DHQ, New Delhi-110011.
4. Addl Dte Gen of Pers Ser, Adjutant General's Branch, Army HQ, A' Wing, Sena Bhawan, DHQ PO, New Delhi – 110011.
5. OIC Records, EME Records, PIN : 900453, C/o 56 APO.
6. O/o PCDA (Pensions), Draupadi Ghat, Allahabad (UP) - 211014.

..... Respondents

Ld. Counsel for the Respondents : **Shri Yogesh Kesarwani**,  
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 quash the Respondent No. 4 letter dated 20 Sep 2003 (Annexure A-2 & Impugned Order) wherein ACP Scheme

was made effective wef 07 Aug 2003 as it is against the letter and spirit of Respondent No. 2 letter dated 09 Aug 1999 with effective date of implementation date 09 Aug 1999.

- B. To consider applicant's case for grant of ACP-1 (Nk Grade) in terms of Govt of India letter dated 09 Aug 1999.
- C. Any other relief as considered deemed fit and proper in the circumstances by this Hon'ble Tribunal be awarded in favour of the applicant.
- D. Cost of the present case as the applicant has been forced in Litigation of instant case."

2. The factual matrix on record is that the applicant was enrolled in the Army as Sepoy on 16.04.1986 and was discharged from service on 30.11.2001 as Sepoy after having rendered 15 years, 07 months & 15 days of service in low medical category. He was granted service pension and disability element accordingly. The applicant submitted many representations/appeals dated 06.04.2021, 11.06.2021 and 08.09.2021 which were rejected by the respondents stating that applicant was discharged from service on 30.11.2001 before effective date of ACP scheme i.e. 07.08.2003. Now the applicant has filed present original application for award of benefit of ACP-I (Naik).

3. Learned counsel for the applicant submitted that applicant was enrolled in the Army as Sepoy on 16.04.1986 and was discharged from service on 30.11.2001 as Sepoy after having rendered 15 years, 07 months & 15 days of service on being placed in low medical category. He was granted service pension and disability element accordingly. The Govt. of India introduced MACP scheme in terms of

6<sup>th</sup> CPC recommendations by superseding the earlier ACP scheme vide their letter dated 19.05.2009. On 30.03.2016, the applicant approached EME Records for grant of ACP-I, i.e. ACP Naik which was replied by EME Records vide letter dated 30.03.2017 stating that ACP scheme was effective w.e.f. 07.08.2003 vide Addl Dte Gen of Pers Ser, AG's Branch, Army HQ letter dated 29.09.2003 and he being retired w.e.f. 30.11.2011, hence not entitled for grant of ACP benefits.

4. Learned counsel for the applicant further submitted that applicant submitted many representations/appeals dated 06.04.2021, 11.06.2021 and 08.09.2021 which were rejected by the respondents stating that applicant was discharged from service on 30.11.2001 before effective date of ACP scheme i.e. 07.08.2003. Learned counsel for the applicant placed reliance on the judgment of the Hon'ble Apex Court in ***Associated Cement Companies Ltd. Vs. P N Sharma***, AIR 1965 sc 1595 : (1965) 2 SCR 366 : 1965) 1 LLJ 433 = 1964-65 (27) FLR 204 in which the Hon'ble Court observed that "*Administrative Authorities or Bodies are mandated to act fairly and objectively and in many cases to comply with Principles of Natural Justices*". He pleaded that applicant should also be given benefit of ACP-I in terms of Govt. of India letter dated 09.08.1999.

5. Learned counsel for the respondents submitted that applicant was enrolled in the Army on 16.04.1986 and was discharged from service on 30.11.2001(AN) on being placed in medical category lower than 'A' and not up to the prescribed military physical standard under sub cause 2A to Army Rule 13 (3) due to non availability of sheltered

appointment in LMC P2 (Permanent). As regards of ACP, V<sup>th</sup> CPC had recommended ACP scheme for the Armed Forces personnel enrolled as Other Ranks (OR). Accordingly, IHQ of MoD (Army) letter dated 29.09.2003 had issued administrative instructions for implementation of the ACP scheme for Other Ranks (OR) of Army (in service) w.e.f. 07.08.2003 granting two financial upgradations to ORs on completion of 10 and 20 years of service in the scale of Naik or equivalent and Havildar or equivalent respectively who were not promoted in regular service. In the instant case, since the applicant was discharged from service w.e.f. 30.11.2001, i.e. prior to 07.08.2003 (the effective date of implementation of ACP scheme), he is not entitled for the benefits of ACP scheme i.e. ACP Naik.

6. Learned counsel for the respondents further submitted that applicant had submitted many petitions dated 15.04.2018, 17.05.2018, 02.07.2018, 18.10.2018 23.04.2019, 06.04.2021 21.04.2021 and all the representations/petitions were suitably replied by EME Records from time to time for denial of ACP-I (Naik) in terms of policy letter dated 29.09.2003. He pleaded for dismissal of Original Application being devoid of merits.

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

8. We find that applicant was discharged from service in the rank of Sepoy on 30.11.2001(AN) in low medical category and letter for implementation of ACP scheme was issued by IHQ of MoD (Army) vide letter dated 29.09.2003 and administrative instructions were issued for implementation of the ACP scheme for Other Ranks (OR)

of Army (in service) w.e.f. 07.08.2003 granting two financial upgradations to ORs on completion of 10 and 20 years of service in the rank of Naik and Havildar respectively. Since, the applicant was discharged from service w.e.f. 30.11.2001, i.e. prior to 07.08.2003 (the effective date of implementation of ACP scheme), applicant is not entitled for the benefit of ACP scheme i.e. ACP Naik being pre 2003 retiree. Hence, we are of the view that claim of applicant for grant of benefit of ACP-I (Naik grade) without fulfilling eligibility criteria as per policy is not sustainable and has rightly been rejected by the respondents which need no interference.

9. It is also clarified that letter dated 09.08.1999, issued by Govt. of India, Ministry of Personnel, Public Grievances and Pensions, New Delhi with regard to ACP scheme to which learned counsel for the applicant placed reliance, is applicable for Central Government civilian employees and not for Armed Forces personnel. Hence, the benefit of this letter cannot be extended to the applicant being Armed Forces personnel.

10. In view of above, Original Application deserves to be dismissed and is accordingly **dismissed**.

11. No order as to costs.

12. Pending Misc. Application(s), if any, shall stand disposed of.

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

Dated: March, 2022  
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