

Court No 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION NO. 112 of 2022**

Wednesday, this the 17th day of May, 2022

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

No. 14470148A Ex Havildar Rajendra Prasad Singh son of Rampher Singh, Village and Post-Kororaghupur Khajura, PS-Haidarganj, District-Ayodhya (UP), Pin-224001.

.....Applicant

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

Versus

1. Union of India, through Secretary Ministry of Defence, DHQ, PO – New Delhi-11.
2. The Chief of the Army Staff, IHQ of MoD (Army), New Delhi-11.
3. The Officer-in-Charge, Records, the Artillery Records, PIN-908802, C/o 56 APO.
4. Pay and Acct Office (Ors), The Artillery Records, Pin-908802, C/o 56 APO.
5. Principal Controller of Defence Accounts, Draupadi Ghat, Allahabad (UP).

.....Respondents

Ld. Counsel for the : **Shri RC Shukla**, Advocate
Respondents. Central Govt Counsel

ORDER

1. This O.A. has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by the applicant whereby the applicant has sought following reliefs:-

(a) Issue/pass an order or direction of appropriate nature for grant of benefit of 3rd MACP by quashing the Artillery Records letter bearing number 1677/Petition/505/MACP dated 27 December 2021.

(b) Issue/pass an order or direction of appropriate nature to the respondents to revise the pensionary benefits after grant of 3rd MACP.

(c) Issue/pass an order or direction of appropriate nature to the respondents to make the payment of arrears along with interest accrued to the applicant due to revision of his pension and continue to pay regular pension to the applicant in the revised rate.

(d) Issue/pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.

(e) Allow this application with costs.

2. The factual matrix on record is that the applicant was enrolled in the Army in the Regiment of Artillery on 15.10.1980 and was discharged from service on 31.03.2006 (AN) after rendering 25 years, 05 months and 05 days of service (including 12 days non qualifying service on account of absent without leave) after fulfilling the conditions of enrolment. Applicant is in receipt of service pension of the rank of Havildar vide PPO No S/022972/2006 (Army) dated 12.05.2006. Grievance of the applicant is that he has been denied benefit of Modified Assured Career Progression Scheme (MACP) in contravention to the recommendation of the 6th Central Pay Commission after completion of 8 years of service in the same rank i.e. Havildar. The applicant preferred a representation dated 11.12.2021 before respondent No. 3 for grant

of MACP-III (Nb Sub Grade), but the same has been rejected vide order dated 27.12.2021 stating that MACP is not applicable to the applicant as he was awarded a red ink entry punishment on 18.10.2005 which debarred him for grant of MACP. Being aggrieved, the applicant has filed present original application.

3. Learned counsel for the applicant submitted that MACP is applicable w.e.f. 01.01.2006, hence after completion of 8 years of service in the rank of Havildar he is eligible for MCAP-III (Nb Sub Grade) and he should be granted benefit accordingly. He has placed reliance on judgment of AFT Chennai dated 23.11.2017 passed in O.A. No. 108 of 2016, **Ex Hav M Sankarraaj vs Union of India & Ors** and judgment of AFT, Chandimandir dated 21.05.2014 passed in O.A. No. 619 of 2013, **Daya Nand vs Union of India & Ors**.

4. On the other hand, 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. Later, it was made effective w.e.f. 01.01.2006 instead of 01.09.2008. He further submitted that as per Govt of India, Min of Def letter dated 30.05.2011 and 13.06.2011 discipline criteria for promotion will also be applicable for MACP upgradation. Accordingly, at the time of MACP upgradation, an individual should meet discipline criteria for promotion as laid down vide policy letter dated 10.10.1997. He further submitted that as per policy, an individual should not have more than three red ink entries during the entire service, not more than one red ink entry in the last five years and no red ink entry in last one year for further promotion to the next higher grade. His further submission is that the applicant had completed 24 years service on 15.10.2004. However, provisions of MACP scheme initially came into effect w.e.f. 01.09.2008, thereafter the same were amended to be made applicable w.e.f. 01.01.2006 instead of 01.09.2008. Accordingly, the applicant is entitled for MACP-III w.e.f. 01.01.2006, but since

the applicant was awarded red ink entry on 18.10.2005 i.e. within one year for eligibility of MACP, he was debarred for one year for grant of MACP from the date of punishment awarded. Hence, in accordance with prevailing policy on the subject, the applicant was not granted the benefits of financial upgradation under the MACP Scheme.

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

6. It is not disputed that the applicant was enrolled in the Army on 15.10.1980 and was discharged from service w.e.f. 31.03.2006 (AN). It is also not disputed that the applicant was promoted to the rank of Hav on 10.04.1996 and he completed 24 years service on 15.10.2004. This implies that the applicant was eligible for MACP-III on 15.10.2004 but since the benefits of MACP were made available w.e.f. 01.01.2006, he is entitled for MACP benefits w.e.f. 01.01.2006. Respondents' contention that he was awarded a red ink entry punishment on 18.10.2005 which made him ineligible for grant of MACP-III as per policy letter dated 10.10.1997, 30.05.2011 and 13.06.2011, is **unsustainable as the red ink entry punishment was awarded to the applicant after completion of 24 years of service.**

7. On 18.02.2022 a submission was made by learned counsel for the respondents that grievance raised in O.A. has been redressed. The learned counsel had also sought eight weeks time to file affidavit of compliance which was allowed. During the course of hearing on 05.05.2022, it was submitted by learned counsel for the respondents that the compliance would be filed shortly and the case was adjourned allowing him one week time to file affidavit of compliance. On 17.05.2022 the case was heard finally when also the respondents had failed to file affidavit of compliance.

8. In view of the above, we find that the applicant is eligible for grant of MACP-III which fact was admitted by the respondents on 18.02.2022.

9. Subject to aforesaid observations, the O.A. is allowed. The impugned order dated 27.12.2021 is quashed. The respondents to consider the claim of the applicant for implementation of the Modified Assured Career Progression Scheme with effect from 01.01.2006 and grant all consequential benefits (Nb Sub grade w.e.f. 01.01.2006, subsequent increments and pensionary benefits) to the applicant. The respondents shall take appropriate decision expeditiously, preferably within three months from the date of receipt of a certified copy of this order. Delay shall invite interest @ 8% per annum till actual payment.

10. No order as to costs.

11. Pending applications, if any, are disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

Dated : 17.05.2022
rathore

(Justice Umesh Chandra Srivastava)
Member (J)