

Court No. 2
(SI No.10)

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 636 of 2023

Thursday, this the 16th day of May, 2024

Hon'ble Mr. Justice Anil Kumar, Member (J)
Hon'ble Maj Gen Sanjay Singh, Member (A)

Brajendra Singh Yadav (No. 15697461P Ex. Sepoy), S/o Sri Kalyan Singh Yadav, R/o House No. 28E/2E/12 Bhola Ka Pura, Dhoomanganj, District Prayagraj, U.P.

..... Applicant

Ld. Counsel for : **Shri Ashok Kumar**, Advocate
Applicant

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, Delhi-110011.
2. The Officer In-charge Records, Signals, PIN-908770, C/o 56 APO.
3. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad.

.....Respondents

Ld. Counsel for the : **Shri Devesh Kumar**, Advocate
Respondents Central Govt Standing Counsel

ORDER

1. This Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 whereby the applicant has claimed the following reliefs:-

(i) The Hon'ble Court may graciously be pleased to direct the respondents to grant benefit of MACP (Modified Assured Career Progression I & II) along with arrear and interest to the applicant w.e.f. 1-1-2006 taking into consideration 17 years and 15 days services of applicant.

(ii) This Hon'ble Court may further be pleased to pass such other and/or further order as deem fit, proper and necessary in the circumstances of this case.

(iii) Award costs to the applicant.

2. Brief facts of the case are that the applicant was enrolled in the Army on 17.03.2005 and discharged from service w.e.f. 31.03.2022 (AN) under Rule 13 (3) III (i) of Army Rules, 1954 on fulfilling terms of engagement. He rendered 17 years and 15 days service in the Army for which he is in receipt of service pension vide PCDA (P), Prayagraj PPO No. 205202201575. During the course of his service, he was granted benefits of 1st MACP (Naik grade) w.e.f. 17.03.2013 vide Signals Records Part-II Order No 1/0921/0073/2013.

4. Grievance of the applicant is that he has been denied MACP-II even after he completed 16 years service, which is a

criterion for grant of MACP-II as per policy letter dated 25.06.2018. In this regard applicant submitted application dated 07.11.2022 addressed to his Commanding Officer but no heed being given to his application, this O.A. has been filed.

5. Submission of learned counsel for the applicant is that the applicant is entitled for grant of MACP-II grade pay after completion of 16 years service in terms of policy letters on the subject issued from time to time for grant of MACP. Further submission of learned counsel for the applicant is that respondents have denied grant of MACP-II even after submitting grievance dated 07.11.2022 to his Commanding Officer, which is not justified. His contention is that the three financial upgradations are based on length of service rendered i.e. MACP-I on completion of 08 years service, MACP-II on completion of 16 years service and continuously remaining in MACP-I grade pay for 08 years and MACP-III on completion of 24 years service and continuously remaining in MACP-II grade pay for 08 years preceding to date becoming eligible for grant of the above financial upgradations. In support of his contention the applicant has relied upon order dated 24.01.2018 passed by this Tribunal in O.A. No 153 of 2016, ***Ex Havildar Vrajesh Kumar Shankhdhar vs UOI &***

Ors. The learned counsel pleaded for grant of MACP-II to the applicant based on order passed by this Tribunal.

6. Per contra, learned counsel for the respondents submitted that the applicant was enrolled in the Army with terms of engagement of 17 years colour and 02 years as reserve. In due course of time, he was attested. He further submitted that the applicant was granted MACP-I on due date i.e. on completion of 08 years service. His further submission is that consequent to giving his unwillingness certificate for further promotion he became ineligible for grant of MACP-II and that is the reason he was denied MACP-II in terms of policy on the subject. He pleaded for dismissal of O.A.

7. Heard Shri Ashok Kumar, learned counsel for the applicant and Shri Devesh Kumar, learned counsel for the respondents and perused the records.

8. Grievance of the applicant is that he was denied MACP-II even after he completed 16 years colour service. In this regard, a reference was made by learned counsel for the applicant that based on order dated 24.01.2018 (supra) applicant is also entitled for grant of MACP-II.

9. The Govt of India, Min of Defence had introduced Assured Career Progression Scheme (ACP) for grant of two

financial upgradations in the interval of 10 and 20 years continuous service in same grade pay and subject to fulfilling the other eligibility conditions. The above scheme was further revised after 6th CPC to Modified Assured Career Progression Scheme (MACP) for grant of three financial upgradations at intervals of 8, 16 and 24 years of continuous service subject to fulfilling the other eligibility conditions. Accordingly, the applicant was granted 1st financial upgradation under MACP Scheme on completion of 08 years continuous service and on fulfilling other criteria.

10. We observe that the applicant had given unwillingness certificate for further promotion. Respondent' contention is that after rendering unwillingness certificate, the applicant became ineligible for grant of MACP-II in terms of para 21 of policy letter dated 13.06.2011. On perusal we find that para 21 prohibits MACP-II on rendering unwillingness certificate for further promotion. For convenience sake, the aforesaid para is reproduced as under:-

“21. Effect of Refusal of Promotion. If an indl refuses promotion, MACP will also be denied. If an indl refuses promotion after MACP, earlier MACP will not be withdrawn. However, he will not be eligible for further MACP. If he again accepts promotion, MACP will also be deferred by the period of debarment due to refusal. Willingness for promotion will be assumed unless an indl states he is unwilling.

11. We have perused the certificate given by the applicant. He has rendered certificate for unwillingness for promotion certifying that he was unwilling for further promotion and wished to retire from service in his present rank on completion of service limits. The applicant has further certified that his option was irreversible which will make him not eligible for promotion any time in future service including financial upgradations under MACP and he has no objection, if he is superseded by his juniors for promotion. Hence, the applicant is not eligible for grant of MACP-II as he himself has rendered unwillingness certificate for further promotion. For convenience sake, extract of certificate dated 22.12.2017 rendered by the applicant is reproduced as under:-

Unwillingness Certificate for the
Promotion/Promotion Cadre

"1. I, No-15697461P Rank-L/Nk Name Brajendra S Yadav of 79 Mtn Bde Sig Coy hereby certify that I am permanent unwilling for further promotion/promotion cadre. I understand the consequential effects of my opinion and I undertake that:-

(i) I cannot submit a request to withdraw the perm unwillingness cert once submitted and it is final. Temporary unwillingness can be withdrawn 12 months periods.

(ii) The loss of seniority because of my unwillingness both, temporary and permanent cannot be restored at later stage.

(iii) I will be posted as per turnover and sector profile.

(iv) I am aware that I am not eligible for grant of MACP on permanent unwilling for promotion cadre/promotion. In case of temporary unwilling I am forfeiting MACP from the date of temporary

unwillingness till further willing for promotion cadre/promotion.”

12. In view of the above, it is clear that while tendering his unwillingness, he accepted that he is foregoing further promotion and MACP. That being the position, the applicant having decided to give up his right for promotion and MACP by tendering his unwillingness, he is not entitled to the benefit of MACP-II. We find that he is not eligible for grant of MACP-II and this O.A. deserves to be dismissed.

13. O.A. is **dismissed**, accordingly.

14. No order as to costs.

15. Miscellaneous applications, pending if any, stand disposed off.

(Maj Gen Sanjay Singh)
Member (A)

Dated :16.05.2024

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(Justice Anil Kumar)
Member (J)

RESERVED

(Court No 2)

Form No. 4

{See rule 11(1)}
ORDER SHEET

ARMED FORCES TRIBUNAL, REGIONAL BENCH,

LUCKNOW

O.A. No. 636 of 2023

Brajendra Singh Yadav

Applicant

By Legal Practitioner for the Applicant : Shri Ashok Kumar, Advocate

Versus

Union of India & Ors

Respondents

By Legal Practitioner for Respondents : Shri **Devesh Kumar**, Advocate

Notes of the Registry	Orders of the Tribunal
	<p><u>16.05.2024</u> <u>Hon'ble Mr. Justice Anil Kumar, Member (J)</u> <u>Hon'ble Maj Gen Sanjay Singh, Member (A)</u></p> <p>Judgment pronounced. O.A. No. 636 of 2023 is dismissed. For orders, see our judgment and order passed on separate sheets.</p> <p>(Maj Gen Sanjay Singh) Member (A) <i>rathore</i></p> <p>(Justice Anil Kumar) Member (J)</p>