

E-Court**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION NO. 420 of 2022**

Tuesday, this the 29th day of November, 2022

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

No. 15686399N Sigmn Samiran Debnath, son of Nitai Debnath, R/o C/o Manoj Kumar, Village-Gharia, P.O.-Manpur, Tehsil-Bulandshahr, Distt-Bulandshahr, State-Uttar Pradesh, PIN Code-245801.

.....Applicant

Ld. Counsel for the: **Shri Manoj Kumar Awasthi**, Advocate
Applicant

Versus

1. Union of India, through its Secretary Ministry of Defence, South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarter of Ministry of Defence (Army), South Block, New Delhi-110011.
3. The Officer-in-Charge Records, Signals Records, PIN-908770, C/o 56 APO
4. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad (Prayagraj).
5. The PAO (OR), Corps of Signals, Jabalpur, MP-482001.

.....Respondents

Ld. Counsel for the : **Shri Manu Kumar Srivastava**, Advocate
Respondents. Central Govt Counsel

ORDER (Oral)

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) To issue/pass an order or direction to the respondents to grant the benefit of Second MACPS despite of completion of over 17 years of service with all the consequential benefits alongwith @ 12% interest in light of Hon'ble Tribunal judgments.

(b) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstance of the case is also granted along with cost of the O.A.

2. The factual matrix on record is that the applicant was enrolled in the Army on 26.05.2003 and was discharged from service on 31.05.2020 (AN) having rendered 17 years and 06 days of service after fulfilling the conditions of enrolment under Rule 13 (3) III (i) of Army Rules 1954. The applicant was granted service pension as per PPO No 157202004385 w.e.f. 01.06.2000 which he is regularly in receipt of. Applicant was granted 1st MACP on 27.05.2011 on completion of 08 years service and 2nd MACP on 27.05.2019 on completion of 16 years service but the financial benefits of 2nd MACP were denied by the respondents. In regard to this applicant preferred a representation dated 04.06.2020 but it has not been replied as yet. This O.A. has been filed for grant of 2nd MACP w.e.f. 27.05.2019.

3. Learned counsel for the applicant submitted that the Government of India had introduced Assured Career Progression (ACP) Scheme on recommendation of Vth Central Pay Commission. The said scheme was revised with three financial up-gradations i.e. after 8 years, 16 years and 24 years of service. Subsequently, in May 2011, the Government introduced a Modified Assured Career Progression Scheme (in short, MACP) for personnel below officer rank superseding the previous ACP scheme. The scheme was made to take effect from 01.09.2008 which was subsequently made effective w.e.f. 01.01.2006 vide policy letter dated 25.07.2018. It is also submitted that the applicant after discharge from service approached the respondents for benefits of the scheme but no heed was given to his representation submitted on 04.06.2020. Learned counsel for 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 Union of India & Ors***, and submitted that in view of the aforesaid judgment, applicant is entitled for grant of 2nd MACP. He pleaded for grant of 2nd MACP w.e.f. 27.05.2019.

4. The contentions advanced by learned counsel for the respondents, per contra, are that subsequent to issue of MACP scheme, detailed Administrative Instructions for grant of MACP scheme were issued by

the Army Headquarters in June 2011 vide letter dated 13.06.2011. Para 21 of the aforesaid instructions clarified that if an individual refuses promotion, MACP will also be denied. Para 15 of the Appendix to the instructions clarified that unwillingness to attend promotion cadre amounts to unwillingness or refusal for promotion. It was further submitted that the applicant was granted 2nd MACP on completion of 16 years of service w.e.f. 27.05.2019 and this was also published vide Part-II Order No 1/1728/0005/2020 dated 20.03.2020 but it was cancelled vide Part-II Order No 1/2323/0006/2020 dated 05.05.2020 on the ground of his submitting unwillingness for promotion to rank of Naik. The said promotion order was issued w.e.f. 01.01.2018 vide letter dated 11.01.2018. It is also contended that the applicant was offered regular promotion but since he had denied accepting the same, 2nd MACP was cancelled as per Para 21 of policy letter dated 13.06.2011 as per which 'if an individual refuses promotion, MACP will also be denied. If an individual 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 individual states

he is unwilling.' He pleaded for dismissal of O.A. on the ground that the applicant submitted his unwillingness to accept further promotion.

5. Heard Shri Manoj Kumar Awasthi, learned counsel for the applicant and Shri Manu Kumar Srivastava, learned counsel for the respondents and perused the material placed on record.

6. The only contention of the respondents is that applicant was denied 2nd MACP on the ground that he had submitted an unwillingness certificate for further promotion, as such he was ineligible for promotion and consequently for benefits accruing from 2nd MACP. Attention of the Tribunal was invited to Para 15 of Appendix 'X' to Army Headquarters Administrative Instructions which postulates that unwillingness to attend promotion cadre course also amounts to unwillingness/refusal for promotion. The learned counsel for the applicant contended that the applicant did not submit his unwillingness which made him ineligible for the benefits of the 2nd MACP.

7. It is worthy of notice that ACP scheme of 2003 as well as MACP scheme of 2011 merely envisaged grant of financial benefits to Personnel Below Officer Rank (PBOR) through placement in a higher pay scale and was not to be considered as functional or regular promotion. It cannot be said that unwillingness certificates rendered

for promotion cadre in accordance with Record Office Instructions were irrevocable.

8. It may be noted that it is not the first case. Earlier also, the Kochi Bench of Armed Forces Tribunal examined and dealt on this aspect in O.A. No. 170 of 2016, **Ex Hav Zubair P vs Union of India & Others**, and converged to the conclusion leaning in favour of the applicant in the O.A. Hence the question whether a person who had refused to undergo promotion cadre/course or had given unwillingness for promotion cadre was ineligible for MACP is no more *res integra*. The Armed Forces Tribunal, Regional Bench, Kochi had an occasion to consider this aspect of the matter and observed as under:-

"As observed, the applicant had given unwillingness certificate on 20th Jun 2003, in accordance with the provisions of AEC Record Office Instructions specifying mandatory criteria courses for promotion and impact of unwillingness to undergo such courses. The ROI specified that an individual who is unwilling to attend criteria course/promotion cadre, relinquishes his claim for next higher rank as he has not qualified the necessary promotion course. At the stage of signing such a certificate, there was no MACP Scheme which was introduced only in May 2011 to be effective from 01 Sept 2008. Even the earlier ACP was Scheme introduced in August 2003, which, as such was not applicable to direct entry Havildars like the applicant. The ACP Scheme of 2003 as well as the MACP Scheme of 2011 merely envisaged grant of financial benefits to Personnel Below Officer Rank (PBOR) of the three services through placement in a higher pay scale and was not to be considered as functional or regular promotion. It is also observed that the unwillingness certificate rendered in accordance with ROI is not really irrevocable as there were

provisions to apply for withdrawal of unwillingness certificate and for subsequent detailment of the course provided the individual made such an application to obtain the sanction of Additional DG AE. The Additional DG AE could then consider the submission made by the individual and grant necessary waiver. The aspect of whether a person who had refused to undergo promotion course or had given permanent unwillingness for promotion was eligible for MACP is no more *res integra* as this Bench had examined the issue in O.A.No.73/14 and connected cases and more recently in O.A.Nos.26 and 40 of 2015 and O.A.No.25/2016 and connected cases. In our view, the question to be considered is whether the applicants had any opportunity for promotion based on vacancies available from the date of coming into effect of MACP till their retirement. If the applicants had no opportunity for promotion for want of vacancy in the next higher rank, then their claim for MACP could not be denied only on the basis of the undertaking executed by them. While the respondents have also contended that unwillingness to undergo mandatory/criteria course for promotion amounts to unwillingness/refusal for promotion, it is observed that there is no such provision in the Government letters at Annexures A2 and A4 or in the Administrative Instructions issued by Army Headquarters (Annexure R1). The provisions of Para 15 quoted by the respondents is only in Appendix 'A' to the Administrative Instructions which is essentially a compilation of frequently asked questions on MACPS. While the answer to question No.15 states that unwillingness to attend promotion cadre amounts to unwillingness/refusal for promotion, since there are no enabling provisions in the Policy letters governing the issue, a mere question/ answer in the Appendix cannot be claimed as a provision to deny the benefit of MACPS. Therefore, we do not see any merit in such a contention and the benefit of MACP Scheme could not be denied to the applicant merely on the basis of an unwillingness certificate given by him prior to the introduction of the Scheme, if he had no opportunity for promotion for want of vacancy in the next higher rank. 11. When the MACP Scheme was introduced to be effective from 01 September 2008, the applicant, who had been enrolled on 20 Apr 1990, had a little over 18 years of service. Therefore, in accordance with the provisions, he was eligible by requisite service for second MACP with effect from 01 September 2008 as he had more than 16 years of service as on that date provided he did not have any chance for promotion prior to that date. The respondents have submitted that the immediate senior as well

as the immediate junior of the applicant were promoted with effect from 01 Feb 2011 ie more than 2 years after the date of introduction of MACP Scheme. Therefore, in our view, the applicant did not have any opportunity for promotion to next higher rank for want of vacancy prior to 01 Sep 2008 even if he had qualified in the criteria course. Hence, he was eligible for the benefit of second MACP with effect from 01 Sep 2008 provided he was found fit after due screening in accordance with law."

9. Coming to the present case, the moot question which arises for adjudication is whether the applicant had any opportunity for promotion based on vacancies available from the date of coming into effect of MACPS till his discharge? If the applicant had no opportunity for promotion for want of vacancy in the next higher rank, then his claim for MACP could not be denied only on the basis of the undertaking containing his unwillingness. The contention that unwillingness to undergo promotion cadre course for promotion amounts to unwillingness/refusal for promotion, does not impress inasmuch as there is no such provision in the Administrative Instructions issued by Army Headquarters. The provisions of Para 15 quoted by the respondents is only in Appendix 'A' to the Administrative Instructions, as observed in the case of **Ex Hav Zubair P** (supra), is essentially a compilation of frequently asked questions on MACP. While the answer to question No. 15 states that unwillingness to attend promotion cadre course amounts to unwillingness/refusal for

promotion, since there is no enabling provision in the policy letters governing the issue, a mere question/answer in the Appendix cannot be claimed as a provision to deny the benefit of MACP. There appears to be no substance in the contention of the respondents that benefits of 2nd MACP scheme were not available to the applicant on account of unwillingness certificate given by him for promotion.

10. Further, during the course of hearing, a submission was made by learned counsel for the respondents that benefits of 2nd MACP were denied to the applicant on the ground of submitting his unwillingness certificate for further promotion. On query, learned counsel for the respondents could not produce the unwillingness certificate submitted by the applicant.

11. The applicant was enrolled on 26.05.2003 and was discharged from service on 31.05.2020, meaning thereby he was entitled to be granted 1st MACP on completion of 08 years of service and 2nd MACP on completion of 16 years of service which he rendered prior to his discharge from service after completion of terms of engagement.

12. As stated above, in our considered view, there was no enabling provision in the MACP which could disentitle the applicant merely because he submitted his unwillingness certificate. The only condition

that was available was that if the applicant had no opportunity for promotion till his retirement, the benefit of MACP could not be denied to him merely on the basis of unwillingness certificate rendered by him at the time of his promotion cadre course.

13. As a result of foregoing discussion, the O.A. is **allowed**. The respondents are directed to give due consideration to the claim of the applicant for the benefit of 2nd MACP due to him on 27.05.2019 by ignoring the unwillingness/willingness certificate given by the applicant, which in fact was not given in this case as the respondents could not produce the unwillingness certificate when asked. The appropriate decision shall be intimated to the applicant within a period of four months from the date of receipt of a certified copy of this order. Default will invite interest @ 8% p.a.

14. No order as to costs.

15. Pending miscellaneous application(s), if any, shall stand disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

Dated : 29.11.2022

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(Justice Umesh Chandra Srivastava)
Member (J)