

**E- Court No. 1**

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

**Original Application No 252 of 2022**

Friday, this the 18<sup>th</sup> day of November, 2022

**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**

**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

No 13987134H, Ex Hav (MACP-III Nb Sub Grade), Itraj Lal Jatav, S/o Shri Hari Prasad, R/o C/o Dwarika Nath Singh, Vill & Post – Gahani, Tehsil – Mau, District- Mau- 221705 (U.P.)

..... Applicant

Ld. Counsel for the Applicant: **Shri Om Prakash Kushwaha,  
Advocate**

Versus

1. Union of India, through the Secretary, Ministry of Defence (Army), New Delhi- 110011.
2. The Chief of Army Staff, IHQ of MoD (Army) Sena Bhawan, New Delhi.
3. Addl Dte Gen Pers Services Standing Army Pay Commission Section), IHQ of MoD(Army), Room No 23, Plot No 108 (West), Brassey Avenue, Church Road, New Delhi- 110001.
4. Officer in Charge Records, Army Medical Corps, Lucknow Cantt (U.P.).
5. Office of PA ®, Army Medical Corps, Lucknow, (U.P.)- 226002.

6. Officer of PCDA (P), Draupadighat, Allahabad, U.P. - 211014.

..... Respondents

Ld. Counsel for the Respondents : **Shri Ramesh Chandra Shukla,  
Central Govt Counsel.**

**ORDER**

**“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”**

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 issue pass an order or direction of appropriate nature to the respondents to re-fix/revised the Band pay and pay matrix from Rs. 43600/- to 46200/- forthwith as per the direction issued by Govt of India, Ministry of Defence (Department of Pay Services) letter dated 26 Feb 2019 (Annexure A-1).
- B. To issue/ pass an order or direction of an appropriate nature to the respondents to make the payment of arrears along with suitable rate of interest, as deemed fit and proper by this Hon’ble Tribunal, Accrued to the applicant due to revision of his Band Pay & Pay Matrix and continues to pay service

pension and consequential benefits to the applicant in the revised rate in accordance to rules.

- C. Any other relief as considered proper by the Hon'ble Tribunal be awarded in favour of the applicant.

2. The factual matrix on record is that the applicant was enrolled in the Army on 28.10.1993 and was discharged from service on 31.10.2019 under the provisions of Rule 13 (3) III (i) of Army Rules, 1954 after rendering 26 years of service. The applicant was issued PPO with respect of implementation of 7<sup>th</sup> CPC endorsing pay in pay matrix Rs. 43,600/- instead of Rs. 46,200/-. The applicant represented his case for grant of III Modified Assured Career Progression (MACP III) which was denied by the respondents. Being aggrieved, the applicant has filed present original application.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Army on 28.10.1993. He was promoted to the rank of Havildar (Hav) in his own turn and discharged from service on 31.10.2019 on completion of his terms of engagement after rendering 26 years of service. Government of India introduced MACP scheme for personnel below officer rank superseding the previous ACP Scheme. The scheme was made effective from 01.09.2008. The Government of

India, Min of Def vide letter dated 26.02.2019, circulated letter No C7099/Policy/ SACPs/2019 dated 08 Mar 2019, issued guidelines to all effected service personnel to apply in Form of Option annexed to it. The applicant applied in Form of Option (Option Certificate) in terms of letter dated 26.02.2019 but the respondents denied to process the same. He was issued PPO endorsing pay in pay matrix 43,600/- instead of Rs. 46,200/-. The applicant after rendering 26 years of service in the rank of Hav was entitled for the benefit of MACP-III. The applicant represented his case for grant of MACP-III which was denied by the respondents stating that applicant was not entitled for the benefit of this scheme. Learned counsel for the applicant pleaded that the applicant is eligible for MCAP-III (Nb Sub Grade) and he should be granted benefit accordingly.

4. Per contra, learned counsel for the respondents submitted that applicant was promoted to the rank of Hav with seniority from 01.04.2015 and he retired from service on 30.10.2019 in the rank of Hav after rendering 26 years of service. He was granted service pension in the rank of Hav ACP Nb Sub Grade vide PPO No 185201901509 Suffix 0100. He represented his case for re-fix/revise his pension from pay matrix Rs. 43,600/- to Rs. 46,200/- in terms of Govt of India Min of Def

letter dated 26.02.2019. Case of the applicant was examined by the concerned authority in detail and his pay was fixed in the scale more beneficial to him. Hav (AA) Govind Singh opted the pay fixation in 7<sup>th</sup> CPC on 24.02.2017 instead of 01.01.2016 with loss of all type of emoluments and arrears of pay from 01.01.2016 to 23.02.2017, hence his pay is higher than the other personnel who opted 7<sup>th</sup> CPC on 01.01.2016. Hav Itraj Lal Jatav switched over to 7<sup>th</sup> CPC on 01.01.2016, hence his pay is less in comparison to Hav (AA) Govind Singh. In the instant case, option certificate for revision of basic pay was required to be submitted to Record Office during the period 01.01.2016 to 03.05.2017. The applicant was required to exercise the option for fixation of his pay as per time frame provided but he did not exercise the option in time, hence his pay fixation was done as per the provisions of para 6 of SRO. Consequently, Pay Account office (Other Ranks) Army Medical Corps, Lucknow fixed the pay of the applicant in terms of Para 6 of Ministry of Defence Notification bearing SRO No 9 (E) dated 03 May 2017. Learned counsel for the respondents pleaded that pension of the applicant has correctly been fixed and he is not entitled for enhancement of pension as prayed, hence O.A. is devoid of merit and lacking substance and is liable to be dismissed.

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

6. In the present case, applicant was discharged from service in the rank of Havildar on completion of terms of engagement of service after rendering 26 years and 4 days of service. His pay was required to be fixed in the manner which was more beneficial to him irrespective of giving of option or otherwise as per recommendations of 7th Central Pay Commission which was revised with three financial upgradations i.e. after 8 years, 16 years and 24 years of service and Modified Assured Career Progression (MACP) Scheme which took place with effect from 01.09.2008. The benefits of this Scheme despite having completed 26 years of service was not extended to the applicant because of non exercising of option on time as per Government of India, Ministry of Defence Office Memorandum No 1(20)/2017/D (Pay/Services) dated 26.02.2019 which is reproduced below :-

***“Clarification on availability of Option for fixation of pay on promotion from the date of next increment (DNI) in the lower post and method of fixation of pay from DNI, if opted for, in respect of Army Pay Rules 2017, Air Force Pay Rules 2017 and Navy Pay Regulations 2017 in respect officers and JCOs/OR equivalent.***

1. Reference is invited to Ministry of Defence O.M. of even No dated 22.03.2018. In this connection, it is stated that the Option is to be exercised within three months from the date of promotion, to have pay fixed under these provisions from the date of such promotion, to have pay fixed under these provisions from the date of such promotion or to have the pay fixed from the date of actual of next increment in the scale of the pay in lower grade.

2. For all personnel who have been promoted in the interim period (from 01 January 2016 until the issuance of this O.M), the Option is to be exercised within six months of issuance of this O.M. Further, Option for pay fixation on promotion, once exercised is final.

3. This issues with the concurrence of Defence (Finance) vide their I.D. No. 1(8)/2017-AG/PA-35 dated 05.02.2019.”

7. In view of the submissions made by the learned counsel for the parties and above policy letter, it is clear that only dispute is to the effect of non submission of option for fixation of pay within the period stipulated in the instructions i.e. from 01.01.2016 and before 03.05.2017. In fact the issue has already been settled by the Principal Bench, AFT, New Delhi vide order dated 10.12.2014 passed in a bunch of cases with O.A. 113 of 2014, **Sub Chittar Singh and Ors vs. UOI and Ors**, wherein benefit has been granted to the applicants who were denied correct fixation of pay due to not exercising the option on time.

8. In addition to above, we are of the considered opinion that PAO (OR) should have regulated the fixation of pay that would be beneficial (out of the two options mentioned in the scheme) to the applicant but they did not do so. Such exercise should have been done before putting the applicant in a particular pay scale. At this juncture, we may recapitulate that the applicant is put in disadvantageous pay scale because of the reason that allegedly he has not exercised the option in time and admittedly because of the default he is said to be placed in lower pay scale than the pay scale given to his own colleagues, in the same rank and same service. We have not found a single reason on the basis of which it can be justified that in the same rank and in the same cadre, there can be and there should be two pay scales without their being any reasonable classification. The only ground for denial of the pay scale of the applicant is due to non/late submission of the option. In such situation the respondents themselves should have taken steps to remove this anomaly when they came to know that the applicant has not submitted his option due to unawareness of the policy in time and the applicant is going to get less pay than his colleagues in the same rank and service, due to which they will suffer heavy loss.

9. Thus, in the result, the O.A. succeeds and is **allowed**. The respondents are directed to revise the Pay of the applicant @ Rs 46,200/- per month by granting upgradation as per MACP Schemes with all retiral benefits from the due date. We direct the respondents to pay the arrears accrued after fixation of pay to Rs 46,200/- per month within a period of four months from the date of receipt of certified copy of this order failing which it shall carry interest @ 8% per annum from the due date till date of actual payment.

10. There shall be no order as to costs.

11. Pending application(s), if any, are disposed off.

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

Dated: 18 November, 2022

Ukt/-