

RESERVED**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No 261 of 2014**Tuesday, this, the 9th day of October, 2018**Hon'ble Mr. Justice SVS Rathore, Member (J)****Hon'ble Air Marshal BBP Sinha, Member (A)**

Ex Sgt Lakshmi Narayain Singh, Service No. 690142, Trade Rdo/Fit,
resident of Village and Post Manauri Allahabad, present address House
No. 88E/1 Bhusha Gali, Begum Sarai, Mundera, Dhumanganj,
Allahabad (UP)-211011.

...Applicant

Counsel for the applicant: **Shri Shiv Kant Pandey, Advocates**

Versus

1. Union of India through Defence Secretary, Government of India,
South Block, New Delhi.
2. Chief of Air Staff, Air HQ Vayu Bhawan, Rafi Marg, New Delhi -
110106
3. Air Officer Commanding, Air Force Record Office, Subroto Park,
New Delhi.
4. Director – III, Directorate of Air Veteran, Subroto Park, New
Delhi – 10.
5. Deputy Controller Defence Account (Air Force) Subroto Park
New Delhi (10).

.... Respondents

Counsel for the Respondents : **Dr Shailendra Sharma Atal,**
Central Government Counsel

ORDER

“Per Hon’ble Air Marshal BBP Sinha, Member (A)”

1. By means of the present O.A., the applicant has approached this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 praying for the following reliefs:

- (8.1) *This Hon’ble Tribunal may graciously be pleased to pass an order to set aside the order dated 1.7.2014 and 17.7.2014 (A-13, A-15) passed by Director – III, Directorate of Air Veteran Subroto Park, New Delhi – respondent no. 4.*
- (8.2) *This Hon’ble Tribunal may graciously be pleased to pass an order to direct respondents to Grant Assured Career Progression (ACP/MACP to applicant w.e.f. 01.09.2004, granting pay scale of JWO rank of ‘X’ Group with all consequential benefits.*
- (8.3) *This Hon’ble Tribunal may graciously be pleased to pass an order directing respondents to Grant pension for rank of JWO ‘X’ group w.e.f. 14.2.2008 and for life.*
- (8.4) *This Hon’ble Tribunal may graciously be pleased to direct respondents to pay all the arrears with interest which accrued on account of reliefs as prayed sub para 7.1, 7.2, 7.3 above.*
- (8.5) *This Hon’ble Tribunal may graciously be pleased to pass an order as it deems fit, just proper reasonable in the facts and circumstances of the case as pleaded and prayed.*

2. Briefly stated, the facts of the case are that the applicant was recruited as Airman on 15.09.1983 and was discharged from service on own request on 17.01.2008. His terms and conditions of service were governed by the provisions of Air Force Act, 1950 and term of engagement was 20 years. The applicant was allotted the trade of Rdo/Tech in ‘Y’ group. Having successfully completed Conversion Course, the applicant was upgraded to the trade of Radio/Fit and lastly he was promoted to the rank of Sergeant (Rdo/Fit). The applicant competed in Junior Warrant Officer (JWO) Promotion Examination and became eligible for consideration to be promoted to the rank of JWO. The

applicant was considered for promotion to the rank of JWO in Promotion Panel 2003-04 and every year till the year 2007-08 but was not empanelled on the ground that he was not meeting the required merit criteria. It is pleaded in the O.A. that the applicant's supersession was a result of erroneous new Promotion Policy 2002. It is also pleaded in the O.A. that the applicant became eligible for Assured Career Progression on completion of 21 years of total service in Air Force, but his entitlement to Assured Career Progression (ACP) as per Fifth Central Pay Commission (CPC) and Modified Assured Career Progression (MAC) as per recommendation of the Sixth Pay Commission (CPC) was denied to him by the respondents. Feeling aggrieved by non grant of benefit of MACP, the applicant moved a representation which was rejected by the respondents vide order dated 01.07.2014.

3. Learned counsel for the applicant pleaded that on the one hand, the applicant was denied promotion due to erroneous Promotion Policy, 2002 resulting in his supersession by juniors, and on the other hand, on wrong assumption, the respondents did not provide the benefit of ACP/MACP to the applicant, as such, he sought voluntary discharge. Consequently, the applicant was discharged on 17.01.2008 from service from the rank of Sergeant. The second representation made by the applicant was also rejected by the respondents vide order dated 17.07.2014. The learned counsel further concluded by vehemently justifying the entitlement of ACP/MACP to the applicant

4. The learned counsel for the respondents pleaded that the applicant passed JWO Promotion Examination during Jan-March, 2003 cycle. He

was considered for promotion years 2003-2004 to 2007-08 as per Air Force Policy dated 23.09.2002 (Promotion Policy : Warrant Ranks) applicable at the relevant time which was seniority-cum-merit based policy. The applicant could not be empanelled since he did not make the merit within the available vacancies in his trade, rank and grade. So far as denial of ACP/MACP under the Fifth and Sixth CPC to the applicant is concerned, the case of the respondents is that under Fifth CPC, the Scheme of Assured Career Progression was in force. In this Scheme, ACP was entitled in 10th and 20th year of service provided no promotion has taken place in last ten years. The respondents claim that the applicant was promoted to the rank of Corporal and Sergeant before his 10th and 20th year of service, hence he was not entitled ACP under the Fifth CPC Scheme.

5. The Sixth CPC introduced a Modified Assured Career Progression Scheme (MACP). Under MACP three financial upgradation were admissible from the direct entry grade on completion of 8, 16 and 24 years service. Financial up-gradation was also admissible to Air Force personnel whenever they completed 8 years continuous service in the same grade pay. However, the effective date of implementation of MACP Scheme was 01.09.2008, and as per the respondents, since the applicant was discharged on own request on 13.02.2008, as such, he was not eligible for 3rd financial up-gradation under the MACP Scheme.

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

7. From the pleadings on record, the following two questions arise for adjudication in the present case:

- (i) Whether the applicant is entitled for promotion to the next higher rank of JWO?
- (ii) Whether the respondents have erred in not providing benefit of the financial up-gradation in view of the Fifth ACP Scheme and MACP Scheme of Sixth CPC?

8. So far as the first question is concerned, the applicant in the O.A. has made a bald prayer that the Promotion Policy, 2002 in vogue at the relevant time for his promotion to next higher rank be considered as erroneous. The applicant has not challenged the Promotion Policy, 2002. On the other hand, the respondents have come up with a specific case that the Promotion Policy, 2002 was a seniority-cum--merit based policy and since the applicant did not come within the eligibility criteria within the vacancies available in his trade, rank and grade, despite his case being considered for promotion years 2003-2004 to 2007-08, he could not be empanelled. In the absence of any pleadings on record, mere bald assertion in the O.A. that the Promotion Policy, 2002 in vogue at the relevant time, was erroneous would not help the applicant. Thus, we are of the considered opinion that the applicant has not been able to make out a case for consideration of his empanelment/promotion to the rank of JWO and he is not entitled to any relief on this count.

9. Adverting to the second question formulated hereinabove, it may be noticed that, the Ministry of Defence introduced Assured Career

Progression (ACP) Scheme in terms of recommendation of the V Pay Commission providing financial upgradation in next higher grade pay with regard to employees who were stagnated without promotion in the same grade pay. The recommendations of the Fifth Pay Commission with regard to ACP were notified by the Government of India on 09.08.1999, but so far as the Armed Forces personnel including Air Force personnel, the same were implemented belatedly on 07.08.2003. As per this Policy, the benefit of ACP was only available if there was no regular promotion after completion of the 10th or 20th years of service. We have noted that by 8th year of service, the applicant had picked up a series of promotions upto the rank of Corporal, hence he was not eligible for ACP in the 10th years of service. He was promoted to the rank of Sergeant on 01.08.1999. By this date, he had completed about 13 years of service. Therefore, he was once again not eligible for ACP on his 20th year of service, i.e. 15.09.2003. It must be noted that the concept of ACP financial upgradation was primarily meant to compensate those who stagnated for more than 10 years and did not get any financial upgradation through promotion. Thus, to sum up the applicant was not eligible for financial upgradation under ACP Scheme of Fifth CPC.

10. The Sixth CPC was set up by the Government of India to make recommendations in matters to emoluments, allowances and conditions of service also with regard to Armed Forces personnel. The recommendations made by the Sixth CPC were implemented and the Scheme of Modified Assured Career Progression (MACP) was approved which was also made applicable to Air Force personnel. As per

recommendations of the Sixth CPC, benefit of ACP was to accrue after 10 and 20 years of service. However, the Union of India, decided to grant three ACP up-gradations in Sixth CPC on regular intervals of 8 years, 16 years and 24 years of service and also in case of stagnation for 8 years or more in same grade pay. The recommendations of Sixth Pay Commission including the revision of the pay and pay structure came into effect with effect from 01.01.2006, but by a subsequent letter the Government of India clarified that the MACP Scheme would be operational with effect from 01.09.2008 and final up-gradation as per the provisions of earlier ACP Scheme of August 2003 would be granted till 31.08.2008.

11. It is clear that respondents have denied financial upgradation as per MACP of Sixth CPC to the applicant on the ground that he proceeded on discharge on own request on 17.01.2008 whereas MACP Scheme under Sixth CPC was effective from 01.09.2008.

12. The issue of effective date of implementation of MACP as per Sixth CPC is no more RES INTEGRA. On this subject, the coordinate Bench of Armed Forces Tribunal, Chandigarh Regional Bench in its order dated 21.05.2014 passed in OA No. 619 of 2013 ***Daya Nand vs. Union of India and others*** has held that MACP will be effective from 01.01.2006.

Relevant portion of the judgment is as follows:-

“16. We are clear in our mind that the Government can decide to grant the pay scales from one date and in so far as other allowances are concerned, they can grant it from a separate date as mentioned above since because of financial implications, time gap etc. the Government may in its wisdom can decide to grant the allowances from a future date. For example when a sumptuary allowance is raised, it cannot be made retrospective since the employee cannot spend it now and it will be spent as per the permissible limit after it is granted to him. Therefore, in so far as the allowances are concerned, the Government decided to revise them w.e.f. 01.09.2008 which point is not

in issue and we are not going to look into that aspect. However, we are clear that the implementation of the pay structure as well as pension was revised w.e.f. 01.01.2006 and its gazette notification must have been issued after the Cabinet had taken a decision in this regard. The subsequent letters issued, as referred to above, in the nature of clarification by the Ministry and by giving a different date i.e. 01.09.2008 that this scheme would be applicable from 01.09.2008 cannot be said to be giving power to the Ministry to issue the instructions once they had issued the instructions in regard to pay and allowances to be applicable from 01.09.2008 and there is nothing on record to show that fresh cabinet decision was taken and it was duly notified and then it was sought to be implemented.

17. The scheme was clear that this ACP was to be granted after 8, 16 and 24 years of service and the applicability of this scheme as per Annexure A-3 dated 03.08.2009 was also clarified vide which it was clarified that the new ACPs would be applicable w.e.f. 01.01.2006 and the old provisions would be applicable till 31.12.2005. Thereafter the subsequent letter issued by the Ministry clarifying that these instructions will be applicable from 01.09.2008 cannot be said to be in consonance with the decisions already notified in the gazette.

18. It follows from the above discussion that the new ACP forms part of the pay structure and affects the pension which as per the gazette notification was made applicable from 01.01.2006 and does not form part of the allowances which were notified to be applicable from a different date i.e. 01.09.2008 and, therefore, the subsequent letter revising the date of application of these provisions as 01.09.2008 cannot be said to be correct. Consequently, the petitioner and similarly placed persons shall be entitled to be considered for the grant OA 619 of 2013 7 of ACP depending upon the facts of their cases and it would be considered w.e.f. 01.01.2006.

19. Coming to the facts of this case, the petitioner joined the service on 20.04.1990 and was discharged from service on 30.11.2007 after completion of more than 17 years of service in the Army. It was alleged that the petitioner is entitled to two ACPs after completion of 8 years and 16 years of service but the respondents have not released the ACP as applicable to the petitioner and his claim was wrongly rejected vide letter dated 03.09.2012 Annexure A-5.

20. According to the previous policy in force the petitioner was entitled to two ACPs in service after completion of 10 years and 20 years of service. The new scheme had become applicable from 01.01.2006 and under the previous scheme he was entitled to one ACP on completion of 10 years of service and thereafter his case had to be considered accordingly under the old scheme and after 01.01.2006 under new scheme and he must complete 10 years service under the old scheme and 8 years under the new scheme to be eligible for 2nd ACP. The petitioner has pleaded that 1st and 2nd ACP were not released to him and it is for the respondents to consider the case of the petitioner for the grant of ACPs under the previous scheme as well as under the new scheme taking the effective date of implementation of the new scheme as 01.01.2006. In case no promotion has been granted to the petitioner, he is entitled to the ACPs as per the old scheme and after implementation of new scheme taking the date of new scheme of ACP as 01.01.2006. Petitioner's case shall be examined in the light of the above order and decision taken accordingly.

21. We may reiterate that this judgment shall not be considered in personam but in rem and applies to all those persons

who are similarly placed and are entitled to the ACP as per this judgment. We are clear that the Army personnel whether serving or retired who are similarly placed are entitled to the relief and they have been serving on the borders at the risk of their lives protecting the nation and they should not be compelled to file similar petitions and pursuing their cases for number of years before they are granted the relief which has already been granted in favour of the petitioner. Therefore, all those persons who are similarly placed as petitioner are at liberty to make a representation based on this judgment, which shall be disposed of within four months from the receipt of the representation. However, the respondents are at liberty to issue revised PPOs of their own.”

13. This matter has also been finally settled by Hon’ble Supreme Court in its judgment and order dated 08.12.2017 in the case of ***Union of India vs Shri Balbir Singh Anuj &anr*** (Civil Appeal Diary No. 3744 of 2016

14. The Ministry of Defence, Government of India has thereafter issued letter No. 25.07.2018 modifying the date of implementation of MACP, relevant portion of which is reproduced as under:-

“Consequent upon the judgment of Hon’ble Supreme Court dated 08.12.2017 in the matter of Civil Appeal Diary No. 3744 of 2016 (UOI Vs. Shri Balbir Singh Anuj & anr), I am directed to refer to this Ministry’s letter No.14(1)/99-D(AG) dated 30 May 2011 on the above subject and to state that the President is pleased to make the following amendment in para 5 of the aforesaid letter:

FOR “The scheme would be operational w.e.f. 01. Sep 2008”

READ “The scheme would be operational w.e.f. 01.Jan 2006”

2. The other terms and conditions (including eligibility) as mentioned in the MoD letter No.14(1)/99-D(AG) dated 30 May 2011 would continue to remain the same.

3. This issues with the concurrence of the Ministry of Defence (Finance) vide their Dy. No. 1270/Addl. FA(AN)/JS dated 27.06.2018”

15. In view of the forgoing discussions, we are of the considered opinion that there is no scope for any ambiguity on this matter and the applicant has become eligible for financial upgradation with effect from 01.01.2006 as per the MACP Scheme of Sixth CPC.

16. O.A. No.261 of 2014 is accordingly **allowed**. The impugned orders are hereby set aside. The respondents are directed to grant financial upgradation as per MACP Scheme of Sixth CPC to the applicant with effect from 01.01.2006. The respondents are also directed to revise his pay till retirement and also revise the resultant pension. We make it clear that the applicant shall not be entitled to interest on the amount so accrued. This order shall be complied within four months from the date of presentation of a certified copy of this order failing which the applicant shall be entitled to simple interest @ 9% from the date due till actual date of payment.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

(Justice SVS Rathore)
Member (J)

Dated : October 2018

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