

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

Original Application No. 319 of 2015

Friday, this the 01st day of October, 2021

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

Ex Nk No 1483311N Sanjay Kumar Singh son of Shri Ram Yatan Prasad Singh, resident of House No 329, Shekhpura Colony, Aliganj, Lucknow (UP).

.... Applicant

Ld. Counsel for the: **Shri Virat Anand Singh**, Advocate.
Applicant

Versus

1. Union of India and Others through The Secretary Ministry of Defence, South Block, New Delhi-110011.
2. Chief of the Army Staff Integrated HQ of MoD (Army), DHQ, PO-New Delhi-110011.
3. Record Officer, Records, Corps of Engineers, Roorkee.

... Respondents

Ld. Counsel for the: **Mrs Deepti P Bajpai**, Advocate
Respondents. Govt Standing Counsel.

ORDER (Oral)

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the applicants have sought following reliefs:-

(a) To quash the date of his retirement as 30 April 2013 as illegal, wrong and further order applicant to be in service till date of his extended engagement in Med Cat as battle casualty and thus declare now his date of discharge as 31 Aug 2013 and thus consider him notionally till date and thus pay all his service entitlements with interest of 8% p.a. (from 30 April 2013 to 31 Aug 2013).

(b) To direct the respondent to consider applicant claim for MACP-III funds and pay him at the earliest with 8% bank interest payable from date of his discharge (31 Aug 13) after quashing the PPO No S/36553/2013 (Army) and issue fresh PPO.

(c) To pass any order which the lordship may deem proper considering the nature and circumstances of the case.

(d) Allow this appeal with heavy cost.

2. The facts of the case in brief are that the applicant was enrolled in the Army on 18.08.1989 and promoted to the rank of Nk w.e.f. 16.08.2000. He was granted MACP-II w.e.f. 01.09.2008 in terms of 6th CPC. He was granted 02 years service extension for the period 18.08.2011 to 17.08.2013. While posted in Rayang Valley (Arunachal Pradesh), he sustained severe injury to his left hand index finger on 28.05.2011 which was later amputated and he was placed in low medical category for two years from 03.11.2012 to 03.11.2014. Since applicant was serving in extended tenure, his extension was cancelled owing to low medical category and he was discharged from service w.e.f. 30.04.2013 prior to completion of 24 years of service.

Applicant's contention is that the injury sustained by him was attributable to military service being occurred in field area, therefore, his extension of service should not have been cancelled and he should have been allowed to serve till completion of 24 years of service. In this regard applicant had submitted a representation dated 31.08.2013 which is yet to be decided.

3. Learned counsel for the applicant submitted that applicant was serving in extended tenure and his discharge order was issued prior to completion of 24 years of service on the ground of his being in low medical category which was caused on account of severe injury to his left hand index finger. He further submitted that the injury was attributable to military service being occurred in field area and later his finger was amputated by surgery. He pleaded for setting aside the discharge order and grant of MACP-III.

4. On the other hand, learned counsel for the respondents submitted that applicant was granted MACP-II w.e.f. 01.09.2008. He further contended that applicant's extension of service was cancelled on account of his low medical category and he was discharged from service in terms of para 2(b) (iii) of Army Headquarters policy letter dated 21.09.1998 which lays down that persons serving in extended tenure being placed in low medical category should be discharged from service within six months from the date he was placed in low medical category.

5. We have given our anxious consideration to submissions of both the parties as also perused guide lines and rules and regulations on the subject.

6. The applicant was enrolled on 18.08.1989 and he was granted MACP-II w.e.f. 01.09.2008. He was granted two years of extension in service for the period 18.08.2011 to 17.08.2013. His medical category was downgraded to S1H1A2(permt)P1E1 w.e.f. 03.11.2012 and he was discharged from service w.e.f. 30.04.2013 on account of being placed in low medical category by cancelling his extension of tenure. In the circumstances, there appears to be substance in the submission that applicant be made eligible for MACP-III.

7. We are clear that applicant had sustained injury resulting in amputation of his left hand index finger while serving in field area and as per applicant his medical disability was attributable to military service. This fact has not been disputed by the respondents.

8. In our opinion applicant should not have been discharged from service being placed in low medical category which occurred on account of severe injury to his left hand index finger while serving in field area, more so when respondents have not denied attributability factor on this account and only few months were left entitling eligibility to MACP-III. In a more or less similar ground on the point of attributability, AFT Kolkata Bench has allowed O.A. No. 54 of 2016, ***Lt Col Sharma Sunil Datta vs Union of India & Ors*** on 29.09.2016. In this case applicant had sustained injuries during 'Op

Parakram' and the injury was assessed as not attributable to military service by the Release Medical Board.

9. As a result of foregoing discussion, applicant is held entitled to MACP-III. Impugned discharge order dated 30.04.2013 is set aside. The applicant shall be treated to be in service notionally without back wages upto 31.08.2013 and MACP-III should be entitled to him accordingly.

10. In view of the above, O.A. is allowed.

11. Respondents are directed to grant MACP-III to applicant w.e.f. 01.09.2013 along with arrears since this O.A. was filed on 08.09.2015. The whole exercise shall be completed by the respondents within four months from today. Default will invite interest @ 8% p.a.

12. No order as to costs.

13. Pending applications, if any, stand disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 01.10.2021

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