

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No 77 of 2021**Tuesday, this the 5th day of October, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)No. 14260835Y Ex Hav Daya Shankar Pandey
S/o Late Ram Murti Pandey
R/o Vill – Rajapatti Pandeypur, PO – Belahi Lambhua,
Distt - Sultanpur

..... Applicant

Ld. Counsel for the Applicant: **Shri Parijaat Belaura**, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence, New Delhi.
2. Chief of Army Staff, Integrated Headquarters Ministry of Defence, , South Block, New Delhi-110011.
3. Officer-in-charge, Signal Records, PIN – 900477, C/o 56 APO.
4. The Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad (UP).

..... Respondents

Ld. Counsel for the Respondents : **Shri Asheesh Agnihotri**,
Central Govt Counsel.**ORDER**

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:-

“(I) To set aside order dated 03/06/2011 (Anx 1).

(II) To pay difference of salary till applicant would have completed 24 years of service i.e. till 31.12. 2008.

- (III) To pay pension of the rank of Nb/Sub w.e.f. 01.01.2009 after giving the benefit of ACP Scheme.
- (IV) To pay arrear of difference of disability pension along with 12% interest from the date of his release i.e. 31.12.2008 till it is actually paid.
- (V) Any other suitable relief this Hon'ble Court deems fit and proper may also be granted."

2. The factual matrix on record is that the applicant was enrolled in the Army on 01.12.1984 and discharged from service on 31.01.2008 (AN) under Army Rule 13 (3) III (v) to be read in conjunction with sub rule 2A on medical grounds after rendering 23 years and 62 days of service. The applicant is in receipt of service pension and disability element vide PPO and Corrigendum PPOs dated 16.07.2008, 01.10.2009, 22.04.2010, 19.07.2010 and 15.10.2011. The applicant was promoted to the rank of Naik w.e.f. 01.09.1995 and Havildar w.e.f. 01.11.2000. The applicant was discharged from service on 31.01.2008 (AN) in the rank of Havildar as per Chief of the Army Staff (COAS) letter dated 12.04.2007 being Low Medical Category (LMC). Later, the order of COAS dated 12.04.2007 was challenged before the Hon'ble Delhi High Court and the Hon'ble Delhi High Court vide its order dated 20.11.2008 has been pleased to quash the order of COAS dated 12.04.2007 as discharge of all personnel was without holding IMB and all personnel who were discharged from service were directed to be re-instated with all consequential benefits but applicant was not re-instated in service. The applicant preferred a petition dated 23.05.2011 which was replied by Records vide letter dated 03.06.2011 denying benefit of ACP. Being aggrieved, the

applicant has filed present original application for grant of benefit of pay and allowances and 3rd MACP of Nb Sub grade treating total 24 years of service.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Army on 01.12.1984 and discharged from service on 31.01.2008 (AN) after rendering 23 years and 62 days of service in the rank of Havildar. As per Chief of the Army Staff letter dated 12.04.2007, LMC personnel were discharged from the Army in bulk. The applicant was also discharged from service under the provisions of Integrated Headquarters of Ministry of Defence (Army) letter dated 12.04.2007 w.e.f. 31.01.2008 (AN). The order of COAS dated 12.04.2007 was challenged before the Hon'ble Delhi High Court and the Hon'ble High Court vide its order dated 20.11.2008 passed in **Subedar (Skt) Puttan Lal and Others vs. Union of India and others** in bunch of cases has been pleased to quash the order of COAS dated 12.04.2007 as discharge of all personnel was without holding IMB. All personnel who were discharged from service were directed to be re-instated with all consequential benefits. The Court directed that personnel who were discharged as per policy letter dated 12.04.2007 but could not approach the Hon'ble Delhi High Court, following general direction was issued in para 7 of the judgment to avoid unnecessary huge litigation. Para 7 (i) and (v) being important are reproduced below :-

"7. i) Individual options will be sent by the respondents to such persons within two months making an offer to them to rejoin if they so desire as per the aforesaid directions passed in the present writ petitions. The option letter will indicate that such option has to be exercised within a period of 30 days of the receipt of the letter and in case the retiral and pensionary benefits have been paid to them, such persons must rejoin

along with the amount liable to be refunded by them to the respondents which shall also be indicated in the option letter.

v) It is pointed out that there may be certain PBORs, which may also include some petitioners, whose normal date of superannuation has already arrived or would arrive before the aforesaid option is issued. In such cases, the persons would be entitled to only the benefit of pay and allowances for the differential period after adjusting any additional benefit arising from the premature discharge. Needless to say that those who decide not to rejoin after their premature discharge would neither be entitled to any pay and allowances nor would be required to repay the amount, if any, paid to them after their premature discharge.”

4. Learned counsel for the applicant further submitted that applicant was discharged from service without giving any show cause notice neither he was recommended by IMB. The applicant is deemed to have completed 24 years of service on 01.12.2008 and would have retired on 31.12.2008 if he would have not made to premature retired on 31.01.2008 as per policy letter dated 12.04.2007 being LMC. As such, applicant is entitled for salary from 01.02.2008 to 31.12.2008 and accordingly applicant is also entitled for the benefit of 3rd MACP of Nb Sub grade treating completion of 24 years of service on due date of retirement i.e. 31.12.2008.

5. Learned counsel for the applicant placed reliance on the judgment of the Hon'ble Apex Court in ***Union of India vs. Balbir Singh***, (Civil Appeal Diary No. 42810 of 2016), decided on 08.12.2017, has held that benefit of MACP is applicable w.e.f. 01.01.2006 instead of 01.09.2008 as such applicant would be entitled for the benefit of MACP of Nb Sub after completion of 24 years of service.

6. Learned counsel for the applicant also placed reliance on the judgment of AFT (RB) Chennai in O.A. No. 108 of 2012, ***M. Sankarraj vs. Union of India and others***, decided on 23.11.2017 and pleaded

that applicant should also be given benefit of 3rd MACP after condoning shortfall of service being a similar case.

7. Learned counsel for the respondents submitted that Assured Career Progression (ACP) Scheme was introduced in the Army w.e.f. 07.08.2003 for two financial upgradation at an intervals of 10 and 20 years of service for promotion to the rank of Naik and Havildar as per Army HQ letter dated 29.09.2003. As per recommendations of CPC, ACP was revised as Modified Assured Career progression (MACP) scheme to grant three financial upgradation at an intervals of 8, 16 and 24 years of continuous regular service and was made operational for the PBORs w.e.f. 01.09.2008 vide Govt. of India letter dated 30.05.2011 and administrative instructions of this effect have been issued vide IHQ of MoD (Army) letter dated 13.06.2011. The conditions and eligibility criteria as per letter dated 13.06.2011 are as below:-

“(a) There shall be three financial upgradations under the MACPs, counted from the direct entry grade on completion of 8, 16 and 24 years service.

(b) Financial upgradation under the scheme will be admissible whenever a person has spent 8 years continuously in the same grade pay.

(c) In case an individual gets one promotion prior to completion of 8 years, he will be entitled only two financial upgradations on completion of 16 & 24 years of service or on completion of 8 years service in the same grade whichever is earlier. If he get two promotions, he will be entitled only third financial up-gradation on completion of 24 years of service or 8 years without promotion in the same grade whichever is earlier.”

8. Learned counsel for the respondents further submitted that applicant was discharged from service on 31.01.2008 before 01.09.2008 i.e. well before the date of implementation of MACP

scheme. Since, the applicant has neither completed total 24 years of regular service nor 8 years in the same grade pay, hence, in accordance with policy letter dated 13.06.2011, the applicant being not meeting service criteria as per policy, he is not eligible for grant of 3rd MACP of Naib Subedar grade. He pleaded for dismissal of O.A.

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

10. We observe that as per the Hon'ble Delhi High Court order dated 20.11.2008, applicant was neither issued a Show Cause Notice nor any option letter by Signals Records. If the applicant would have received the option letter, he would have submitted it back to the respondents and would have notionally re-instated in service and would have got arrears of his pay and allowances of the intervening period from 01.02.2008 to 31.12.2008. Since, he has not served any option letter, he is not in fault to exercise option. If applicant would not have been discharged from service in low medical category as per COAS order dated 12.04.2007 and would have been allowed to complete his 24 years of service according to his terms of engagement, then he would have become entitled to 3rd MACP on his due date of retirement i.e. 31.12.2008. Hence, the plea of the respondents that applicant has not completed 24 years of regular service for grant of 3rd MACP is not sustainable and resultantly, applicant becomes entitled for 3rd MACP of Nb Sub grade on due date of his retirement i.e. 31.12.2008 treating his 24 years of service.

11. In view of above, Original Application is **partly allowed** with the direction to the respondents to consider the prayer clause (III) of the

applicant for grant of benefit of Modified Assured Career Progression Scheme (MACP-III) of Nb Sub grade with effect from due date of retirement i.e. 31.12.2008 treating his total 24 years of service and grant pensionary benefits of MACP Naib Subedar to the applicant. The impugned order passed by the respondents, if any, is set aside. The respondents are directed to take appropriate decision expeditiously, preferably within four months from the date of receipt of certified copy of this order. Delay shall invite interest @ 8% per annum till actual payment.

12. No order as to costs.

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

Dated: October, 2021
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