

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No 497 of 2022

Monday, this the 10th day of October, 2022

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

No. 30000718M Ex Nk Gambhir Singh, Son of Shri Kripal Singh,
R/o Vill- Kapsarh, PO- Kapsarh, Tehsil- Sardhana, Dist- Meerut
(U.P.).

..... Applicant

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

Versus

1. Union of India through The Secretary Ministry of Defence,
South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarters of Ministry
of Defence (Army), DHQ PO, New Delhi-110011.
3. Chief Record Officer, The Rajput Regimental Centre, C/o 56
APO.

..... Respondents

Ld. Counsel for the Respondents : **Shri Amit Jaiswal,**
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 direct respondents to grant MACP II to the applicant, by granting waiver of shortage of period (if necessary) for 16 years of service. Date of Retirement 28.02.2017.
- (B) Any other relief as considered proper by the Hon’ble Tribunal be awarded in favour of the applicant.
- (C) Allow this application with cost.”

2. The factual matrix on record is that the applicant was enrolled in the Army on 02.02.2000 and he was discharged from service on 28.02.2017 under Rule 13 (3) III (i) of Army Rules 1954 on completion of terms of engagement and he was granted service pension and disability pension for the services rendered in the army. He was granted 1st financial up-gradation as per MACP Scheme from 01.05.2009. The applicant had 452 days of non qualifying service (NQS) during his entire service tenure due to various offences committed by him. Now the applicant has filed

present original application for award of MACP- II on completion of 16 years of service by condoning shortfall of service period.

3. Learned counsel for the applicant submitted that applicant served in the army for 17 years and 27 days with utmost dedication. Character of the applicant was exemplary during entire period of service. On recommendation of V Central Pay Commission, Govt introduced Assured Career Progression (ACP) scheme. The said scheme was revised with three financial up-gradations i.e. after 08 years, 16 years and 24 years of service. Further the said scheme was also made applicable to direct entry Hav/JCOs. Subsequently in May, 2011 the Govt introduced a Modified Assured Career Progression (MACP) Scheme for personnel below officer rank superseding the previous ACP Scheme. The scheme was made to take effect wef 01.09.2008. The applicant was promoted to the rank of Naik (Nk), Time Scale (TS) and he was granted First Financial Up-gradation as per MACP scheme with effect from 01.05.2009 on completion of 08 years of qualifying service. He was entitled second financial up-gradation on completion of 16 years of service in the year 2017 in the rank of Hav as per the MACP scheme but he was not awarded benefit of 2nd MACP in terms of Govt of India letter 30 May 2011. Learned counsel for the applicant further placed reliance on the

judgment of AFT (RB) Lucknow in O.A. No. 153 of 2016, ***Ex Havildar Vrajesh Kumar Shankhdhar vs. Union of India & Ors***, decided on 24.01.2018 and AFT (RB) Kochi in O.A. No.170 of 2016, ***Ex Hav Zubair P vs. Union of India*** and pleaded that applicant should also be given benefit of 2nd MACP being a similar case.

4. On the other hand, learned counsel for the respondents submitted that after retirement the applicant was granted service pension and disability pension as admissible to Naik (TS). He was granted 1st MACP for Naik grade wef 01.05.2009 on completion of 08 years of qualifying service. MACP scheme 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 were 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 up-gradations 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.”

5. Learned counsel for the respondents further submitted that applicant was enrolled in the Army as a Sepoy on 02.02.2000. He had Non Qualifying Service of 452 days, therefore the benefits of First Financial Up- gradation as per MACP scheme was granted to him with effect from 01.05.2009 on completion of 08 years of qualifying service. The benefit of Second Financial Upgradation as MACP scheme to pay scale of Hav was applicable to him with effect from 01.05.2017 on completion of 16 years of qualifying service but the applicant retired from service on 28.02.2017 before due date of grant of second MACP. Hence second MACP of Hav Grade was not granted to him. Learned counsel for the respondents prayed that instant O.A. has no substance and is liable to be dismissed.

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

7. In the instant case, we find that applicant was enrolled in the army on 02.02.2000 and He was discharged from service on 28.02.2017. He rendered total service of 17 years and 27 days,

which includes both spells of his qualifying service and non qualifying service. He was awarded two punishments of pay fine and rigorous imprisonment for absenting himself without leave. He had a Non Qualifying Service of 452 days, therefore the benefits of First Financial Up- gradation as per MACP scheme was granted to him with effect from 01.05.2009 on completion of 08 years of qualifying service. Second Financial Upgradation as MACP scheme to pay scale of Hav was applicable to him wef 01.05.2017 on completion of 16 years of qualifying service. He retired from service on completion of terms of engagement on 28.02.2017 before due date of financial upgradation, hence he was not granted second MACP. We are of the view that claim of the applicant for grant of 2nd MACP is not sustainable and has rightly been rejected by the respondents which need no interference.

8. In view of above, O.A. has no merits, deserves to be dismissed and is accordingly **dismissed**.

9. No order as to costs.

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

Dated: 10 October, 2022
UKT/-