

**E-Court No. 1**

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

**Original Application No 700 of 2021**

Tuesday, this the 11<sup>th</sup> day of October, 2022

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

No. 4003249-W Ex Hav (Clk SD) Ajeet Singh Yadav  
S/o Shri Ram Kewal  
R/o Village – Kadanpur, Post – Kadanpur,  
District – Ayodhya (UP) – 224228

..... Applicant

Ld. Counsel for the Applicant: **Shri V.P. Pandey**, Advocate

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi-110011.
2. The Chief of the Army Staff, Integrated Headquarters, Ministry of Defence (Army), South Block, New Delhi – 110011.
3. Officer In-Charge Records, The Dogra Regiment, PIN – 900235, C/o 56 APO.
4. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Prayagraj-211014.

..... Respondents

Ld. Counsel for the Respondents : **Ms. Preeti Mala**,  
Central Govt 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 for the following reliefs:-

- “(a) To issue/pass an order or direction to the respondents to remove/revise the amount of band pay and grant MACP benefits at par with his junior batch-mates.
- (b) To issue/pass an order or direction to the respondents to pay arrears of difference of salary with effect from 01.02.2009 i.e. due date of actual promotion.
- (c) To issue/pass an order or direction to the respondents to pay revised pension based on amendment in the last drawn salary of applicant.
- (d) Any other relief as considered proper by this Hon’ble Tribunal be awarded in favour of the applicant.
- (e) Cost of the O.A. be awarded to the applicant.”

2. The factual matrix on record is that the applicant was enrolled in the Army on 24.07.2001 and was discharged from service on 31.07.2021 in low medical category after rendering more than 20 years of service. The applicant while posted in 40 RR Bn suffered

injuries in night patrolling duty and was downgraded to low medical category w.e.f. 02.03.2009. Later on when the applicant was upgraded to promotable category in August 2009, he was promoted to the rank of Havildar w.e.f. 01.09.2009 as per availability of vacancy. The applicant was granted financial upgradation of MACP Nb Sub w.e.f. 01.09.2017. The RMB of the applicant held in March 2021, assessed his disabilities @ 20% for life and applicant is in receipt of service pension in the rank of MACP Nb Sub and disability pension @ 50% for life from the date of discharge from service. The applicant is drawing lesser salary than his junior batch-mates. Being aggrieved, the applicant has filed present Original Application for grant of promotion to the rank of Havildar/ MACP Nb Sub from due date and its arrears.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Army on 24.07.2001 and was discharged from service on 31.07.2021 in low medical category after rendering more than 20 years of service. The applicant while posted in 40 RR Bn suffered injuries in night patrolling duty and was downgraded to low medical category w.e.f. 02.03.2009. The RMB held in March 2021 assessed his disabilities @ 20% for life and applicant is in receipt of service

pension in the rank of MACP Nb Sub and disability pension @ 50% for life from the date of discharge from service.

4. Learned counsel for the applicant further submitted that applicant was due for promotion to the rank of Havildar on 01.02.2009 as per his seniority but due to admission in Military Hospital for treatment of his injuries sustained during patrolling duty on 18.12.2008 could not be promoted on his due date being in low medical category. Later on when the applicant was upgraded to promotable category in August 2009, he was promoted to the rank of Havildar w.e.f. 01.09.2009 as per availability of vacancy. The applicant was granted financial upgradation of MACP Nb Sub w.e.f. 01.09.2017 under MACP scheme.

5. Learned counsel for the applicant further submitted that his batch mates namely, Hav Nirmal Singh, Hav Rohit Kumar and Hav Roopesh Kumar Singh have been given financial upgradation of MACP Nb Sub in April 2017 whereas applicant has been granted w.e.f. 01.09.2017 and thus applicant is drawing lesser salary than his junior batch-mates. He placed reliance on the judgment of this Tribunal in the case of **Ex Naik Jageshwar Singh vs. Union of India**, decided on 04.12.2018 and pleaded that applicant's date of

promotion be revised alongwith his junior batch-mates and accordingly, his pension is also to be revised.

6. Learned counsel for the respondents submitted that applicant while serving with 40 Rashtriya Rifle Battalion in J&K, went to Delta Company of the Battalion to meet company personnel to note down their problems regarding publication of Part II Orders. The applicant slipped on the way near a Post on 18.12.2008 due to snow and got injured. He was diagnosed as 'Contusion Lumbar Spine & Lt Knee' and was downgraded to low medical category w.e.f. 02.03.2009. The applicant was due for promotion on 01.02.2009 but he could not be promoted to the next higher rank of Havildar on due date being in low medical category as per provisions/promotion policy. The applicant was upgraded from medical category P-3(T-24) to P-2 (T-24) w.e.f. 16.08.2009 and was promoted to the rank of Havildar w.e.f. 01.09.2009 with ante date seniority w.e.f. 01.02.2009 under the provisions of IHQ of MoD (Army) letter dated 10.10.1997. The applicant was granted financial upgradation in the rank of MACP Naib Subedar w.e.f. 01.09.2017 having spent 8 years continuously in the rank of Havildar as he had assumed the rank of Havildar on 01.09.2017.

7. Learned counsel for the respondents further submitted that applicant was discharged from service in low medical category on 31.07.2021 after rendering more than 20 years of service due to non availability of sheltered appointment to his low medical category in the Regiment. The applicant is in receipt of service pension w.e.f. 01.08.2021 and 20% disability element duly rounded off to 50% for life. The applicant has been promoted to the rank of Havildar as per promotion policy on being upgraded to promotable category and MACP Naib Sub on his due date, hence, no injustice has been done to the applicant by the respondents. She pleaded for dismissal of Original Application.

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

9. We find that applicant was due for promotion to the rank of Havildar w.e.f. 01.02.2009 but he was promoted to the rank of Havildar w.e.f. 01.09.2009 with ante date seniority w.e.f. 01.02.2009 as he was in non promotable low medical category from his due date, i.e. 01.02.2009 to 16.08.2009 (the date on which he was upgraded to promotable category). His further promotion to the rank of MACP Naib

Subedar has been given on his due date, i.e. 01.09.2017 after having been served continuously 8 years in the rank of Havildar and not from 01.02.2009, from the date which he was given ante date seniority in the rank of Havildar.

10. In view of above, we are of the view that applicant should have been granted benefit of MACP Naib Subedar w.e.f. 01.02.2017 counting 8 years service in the rank of Havildar from the date he was granted ante date seniority, i.e. 01.02.2009 and thus, applicant is eligible benefit of MACP Naib Subedar w.e.f. 01.02.2017 and not from 01.09.2017.

11. Resultantly, Original Application is **allowed**. The impugned order passed by the respondents, if any, is set aside. The respondents are directed to grant promotion to the applicant to the rank of MACP Naib Subedar w.e.f. 01.02.2017 taking ante date seniority in the rank of Havildar w.e.f. 01.02.2009, granting increments on due dates and pay arrears of pay and allowances to the applicant to the rank of MACP Naib Subedar w.e.f. 01.02.2017 by issuing a Corrigendum PPO granting arrears of pension also w.e.f. 01.08.2021, based on revised last drawn salary. The Respondents are further directed to comply with the order within a period of four months from the date of receipt

of certified copy of this order. Default will invite interest @ 8% per annum till actual payment.

12. No order as to costs.

13. Pending Misc. Application(s), if any, shall stand disposed off.

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

Dated: October, 2022

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