

**RESERVED**  
**Court No. 2**

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

**Original Application No 37 of 2023**

Monday, this the 9<sup>th</sup> day of October, 2023

**Hon'ble Mr. Justice Anil Kumar, Member (J)**  
**Hon'ble Lt Gen Anil Puri, Member (A)**

No. 13698244Y Ex Hav Amod Kumar Rai  
S/o Sri Virchandra Prasad Rai,  
Permanent Resident of Village and Post Office-Mohanpur, Tehsil and  
District-Samastipur, Bihar, PIN-845506,  
Presently residing at C/o Manoj Kumar Pandey, Dev Vihar Colony,  
Malak Road, Neelmatha, Lucknow, U.P.-226002.

..... Applicant

Ld. Counsel for the Applicant: **Shri Bhanu Pratap Singh Chauhan,**  
Advocate

Versus

1. The Union of India, through, Secretary Ministry of Defence (Army), South Block, New Delhi-110010.
2. Chief of the Army Staff, IHQ MOD (Army), South Block, New Delhi.
3. Officer-in-Charge Records, Brigade of the Guards, PIN-900746, C/o 56 APO.
4. PCDA (Pension), Draupadi Ghat, Allahabad, (UP).

..... Respondents

Ld. Counsel for the Respondents : **Shri Rajeev Narayan Pandey,**  
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:-

“(a) To issue/pass a direction or an order to the respondent to grant the benefit of Third MACPS for the rank of Naib Subedar with all the consequential benefits alongwith @12% interest on arrear in light of Hon’ble Tribunal judgments.

(b) To issue/pass a direction or an order to the respondent to decide the representation dated 01.03.2022 of the applicant for grant of benefit of Third MACPS for the rank of Naib Subedar.

(c) To issue/pass any other order or direction as this Hon’ble Tribunal may deem just, fit and proper under the circumstances of the case in favour of the applicant.

(d) To allow this Original application with costs.”

2. The factual matrix on record is that the applicant was enrolled in the Army on 17.07.1997 and he was discharged from service 31.07.2021 in low medical category under the provisions of Rule 13 (3) item III (i) of Army Rule 1954 on completion of his terms of engagement after rendering 24 years and 15 days service. During the course of his service he was placed in low medical category “S1H1A1P2(P)E1” for diagnosis “**NONOBSTRUCTIVE HCM WITH NORMAL EPICARDIAL CORONARIES IN NYHA CLASS-1 (1-42.2)**” till his discharge from service. The applicant was granted 1<sup>st</sup> MACP (Naik) w.e.f. 01.01.2006 after completion of 08 years service, and thereafter, he was promoted to the rank of Havildar w.e.f. 04.11.2011 and was due for third financial upgradation on completion of 24 years service on 04.11.2019. On account of non submission of willingness/ unwillingness certificate, applicant was denied grant of further MACP and was discharged from service without granting benefit of 3<sup>rd</sup> MACP (Naib Subedar grade). Applicant submitted a

representation dated 01.03.2022 for grant of 3<sup>rd</sup> MACP but the same has not been considered by the respondents. Hence, this O.A. has been filed for grant of benefit of 3<sup>rd</sup> MACP on completion of 24 years of service as on 04.11.2019.

3. Learned counsel for the applicant submitted that the Government had introduced Assured Career Progression (ACP) Scheme on recommendation of V<sup>th</sup> Central Pay Commission. The said scheme was revised with three financial up-gradations i.e. after 8 years, 16 years and 24 years of service. Subsequently, in May 2011, the Government introduced a Modified Assured Career Progression Scheme (in short, MACPS) for Personnel Below Officer Rank (PBOR) superseding the previous ACP scheme. The scheme was made effective from 01.09.2008 and subsequently, it was made effective w.e.f. 01.01.2006. The grievance of the applicant is that applicant has been denied the benefits of the 3<sup>rd</sup> MACP on the ground that he had not expressed willingness/unwillingness to undergo promotion cadre/further promotion. It is further submitted by learned counsel for the applicant that despite not executing the undertaking of willingness/unwillingness, the right of the applicant to receive benefits conferred by MACP did not extinguish for the reason that the applicant did not get opportunity of promotion. The applicant after discharge from service approached the respondents for benefit of the scheme but the same was denied merely on the ground that he had not given willingness/unwillingness certificate.

4. Learned counsel for the applicant further submitted that there are no enabling provisions in the MACPS which could disentitle the applicant as the applicant had already completed his terms of engagement. The applicant was granted 1<sup>st</sup> MACP in the year 2006 on completion of 08 years service and third financial upgradation on completion of 24 years service in the year 2019 was due on 04.11.2019, but he was denied the same. He further submitted that the only condition that was available to the applicant that if the applicant had no opportunity for promotion for want of vacancy in the next higher rank, the benefit of MACP could not be denied to him merely on the basis of willingness/unwillingness certificate not given by the applicant due to being placed in low medical category.

5. Learned counsel for the applicant further submitted that applicant had never given his unwillingness to forgo the promotion as he was in low medical category and his unwillingness was only due to suffering from illness and treatment of illness at various Military Hospitals. Further submission of learned counsel for the applicant is that mere undertaking not given by the applicant would not extinguish the right for grant of the benefit of 3<sup>rd</sup> MACP. He placed reliance on the judgment of AFT, (RB) Lucknow, passed in O.A. No. 153 of 2016 **Ex Hav Vrajesh Kumar Shankhdhar Vs Union of India & Ors** decided on 24.01.2018, O.A. No. 883 of 2022, **Ex Nk Ritesh Kumar vs Union of India & Others**, decided on 19.07.2022, AFT (PB) New Delhi in OA No. 680 of 2016 **Ex Hav Chandra Mohan vs. Union of India & Others**, decided on 09.04.2021 and AFT, Kochi Bench in

O.A. No. 170 of 2016, ***Ex Hav Zubair P Vs Union of India & Others***, decided on 21.02.2017 and submitted that in view of the aforesaid judgments, applicant be granted 3<sup>rd</sup> MACP on completion of 24 years of service.

6. Per contra, submission of learned counsel for the respondents is that applicant was enrolled in the Army on 17.07.1997 and he was discharged from service 31.07.2021 (AN) in low medical category under the provisions of Rule 13 (3) item III (i) of Army Rule 1954 on completion of his terms of engagement after rendering 24 years and 15 days service. During the course of service he was placed in low medical category "S1H1A1P2(P)E1" for diagnosis **"NONOBSTRUCTIVE HCM WITH NORMAL EPICARDIAL CORONARIES IN NYHA CLASS-1 (L-42.2)"** till his discharge. The applicant was granted 1<sup>st</sup> MACP w.e.f. 01.01.2006 after completion of 08 years service, and thereafter, he was promoted to the rank of Havildar w.e.f. 04.11.2011.

7. Learned counsel for the respondents further submitted that as per Para 25 of Govt. of India, Ministry of Defence letter dated 19.05.2009, *"If a regular promotion has been offered but was refused by the employee before becoming entitled to a financial upgradation, no financial upgradation shall be allowed as such an employee has not been stagnated due to lack of opportunities. If however, financial upgradation has been allowed due to stagnation and the employee subsequently, refuses the promotion, it shall not be ground to withdraw the financial upgradation. He shall however, not be eligible*

*to be considered for further financial upgradation till he agrees to be considered for promotion again and the second the next financial upgradation shall also be deferred to the extent of period of debarment due to the refusal". He further submitted that as per Para 21 of IHQ of MoD (Army) letter dated 13.06.2011, "If an individual refuses promotion, MACP will also be denied. If an individual denies promotion after MACP, earlier MACP will not be withdrawn, however, he will not be eligible for further MACP. If he again accepts promotion, MACP will also be deferred by the period of debarment due to refusal. Willingness for promotion will be assumed unless an individual states he is unwilling".*

8. Learned counsel for the respondents further submitted that in the instant case, the applicant was granted 1<sup>st</sup> MACP (Naik) on 01.01.2006 and since, there was stagnation as there was no promotion due to him. The applicant was provided three chances of Havildar to Naib Subedar promotion cadre as conducted by 4 GUARDS, i.e. from 18.04.2018 to 02.06.2018 (1<sup>st</sup> chance), 09.12.2019 to 20.02.2020 (2<sup>nd</sup> chance) and from 19.10.2020 to 12.03.2021 (3<sup>rd</sup> chance), however, neither he attended the promotion cadre nor he forwarded willingness/unwillingness certificate. Hence, 3<sup>rd</sup> MACP for Naib Subedar grade was not granted to the applicant as per policy on the subject vide Govt. of India, Ministry of Defence letters dated 19.05.2009 and 13.06.2011. He pleaded for dismissal of O.A.

9. We have heard learned counsel of both the parties and perused the material placed on record.

10. There is no dispute that applicant was enrolled in the Army on 17.07.1997 and was discharged from service on 31.07.2021 (AN) in low medical category on completion of terms of engagement after rendering 24 years and 15 days of service. On completion of 08 years service, applicant was granted 1<sup>st</sup> MACP w.e.f. 01.01.2006. The applicant was placed in low medical category P2 (T-24) from 09.03.2018 till his discharge from service for the disability **“NONOBSTRUCTIVE HCM WITH NORMAL EPICARDIAL CORONARIES IN NYHA CLASS-1(L-42.2)”**.

11. Respondents' contention is that since the applicant was placed in low medical category, there was a requirement of producing medical certificate as per AO 12/2009/MT from Medical Officer duly certifying that the applicant is fit to undergo promotion cadre course and said cadre will have no any adverse effect on the health of the applicant, however, the applicant failed to produce required certificate from Medical Officer and absented himself from promotion cadre on all three chances given to him and hence, 3<sup>rd</sup> MACP was not granted to the applicant.

12. We find that the applicant was promoted to the rank of Havildar w.e.f. 04.11.2011 and he was placed in low medical category P2 (T-24) w.e.f 09.03.2018. There is no record showing whether he was detailed to undergo promotion cadre on all three chances, from 18.04.2018 to 02.06.2018 (1<sup>st</sup> chance), 09.12.2019 to 20.02.2020 (2<sup>nd</sup>

chance) and from 19.10.2020 to 12.03.2021 (3<sup>rd</sup> chance), as per respondents' contention or he refused to undergo promotion cadre or he gave/rendered any willingness/unwillingness certificate for further promotion but the fact is that being placed in low medical category he was not granted benefit of 3<sup>rd</sup> MACP. The only contention of the respondents is that applicant was denied 3<sup>rd</sup> MACP on the ground that neither the applicant attended promotion cadre nor he submitted willingness/ unwillingness certificate, as such he was ineligible for promotion and consequently, for benefits accruing from MACP.

13. In the case in hand, we find that the applicant was granted 1<sup>st</sup> MACP of Naik w.e.f. 01.01.2006 and thereafter, he was promoted to the rank of Havildar w.e.f. 04.11.2011. The applicant was suffering from disability **“NONOBSTRUCTIVE HCM WITH NORMAL EPICARDIAL CORONARIES IN NYHA CLASS-1(L-42.2)”** since 09.03.2018, when he became due for 3<sup>rd</sup> MACP as on 04.11.2019. The applicant was in low medical category and his unwillingness to attend promotion cadre was only due to his suffering from illness, though, there is no record produced by the respondents that applicant has submitted any willingness/unwillingness certificate to attend promotion cadre. Hence, as stated above, in our considered view, there is no reason to deny benefit of 3<sup>rd</sup> MACP (Naib Subedar grade) to the applicant and thus, the applicant is held entitled to get benefit of financial upgradation, i.e. 3<sup>rd</sup> MACP to the rank of Naib Subedar w.e.f. 04.11.2019

14. As a result of foregoing discussion, the Original Application is **allowed**. The respondents are directed to grant benefit of MACP-III (Naib Subedar grade) from the due date, i.e. w.e.f. 04.11.2019 with all consequential/ pensionary benefits of the rank of Naib Subedar from the next date of discharge from service, i.e. w.e.f. 01.08.2021 and issue a Corrigendum PPO granting arrears of MACP-III (Naib Subedar grade) w.e.f. 01.08.2021 accordingly. The respondents are further directed to implement this order within a period of four months from the date of receipt of certified copy of this order. Delay shall invite interest @ 8% per annum till actual payment.

15. No order as to costs.

16. Pending Miscellaneous Application(s), if any, shall stand disposed off.

**(Lt Gen Anil Puri)**  
**Member (A)**

Dated: October, 2023

RSP/SB

**(Justice Anil Kumar)**  
**Member (J)**