

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No 120 of 2022**Monday, this the 19<sup>th</sup> day of September, 2022**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**No. 14474541A, Ex Havildar Hriday Narayan Singh  
S/o Ramdas Singh  
R/o Village and Post – Baijalpur, Tehsil – Rasara,  
District – Balia (UP) – 221712

..... Applicant

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

Versus

1. Union of India, through Secretary, Ministry of Defence, DHQ PO, New Delhi-110011.
2. The Chief of the Army Staff, IHQ of MoD (Army), New Delhi-11.
3. The Officer-in-Charge Records, The Artillery Records, PIN-908802, C/o 56 APO.
4. Pay and Office (ORs), The Artillery Records, PIN-908802, C/o 56 APO.
5. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad (UP).

..... Respondents

Ld. Counsel for the Respondents : **Mrs. Deepti Prasad Bajpai**,  
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) Issue/pass an order or directions of appropriate nature for grant of benefit of 3<sup>rd</sup> MACP with effect from 01.01.2006.

- (b) Issue/pass an order or direction of appropriate nature to the respondents to revise the pensionary benefits after grant of 3<sup>rd</sup> MACP.
- (c) Issue/pass an order or direction of appropriate nature to the respondents to make the payment of arrears along with interest accrued to the applicant due to revision of his pension and continue to pay regular pension to the applicant in the revised rate.
- (d) Issue/pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.
- (e) Allow this application with costs."

2. The factual matrix on record is that the applicant was enrolled in the Army on 08.08.1981 and was discharged from service on 31.03.2006 (AN) after rendering 24 years, 07 months and 24 days of service. Since applicant has completed 24 years of service, he is entitled to 3<sup>rd</sup> Modified Assured Career Progression (MACP-III) for Nb Sub grade. The applicant submitted a representation dated 13.12.2021 to the respondents for grant of 3<sup>rd</sup> MACP which was replied by PAO (OR) Artillery Records vide letter dated 13.01.2022 stating that his Sheet Roll was not received by their office, hence his claim was not assessed. Being aggrieved, the applicant has filed the instant Original Application.

3. Learned counsel for the applicant submitted that applicant was discharged from service on 31.03.2006 (AN) after rendering 24 years, 07 months and 24 days of service. Since applicant has completed 24 years of service, he is entitled to 3<sup>rd</sup> MACP of Nb Sub grade. The applicant submitted a representation dated 13.12.2021 to the

respondents for grant of 3<sup>rd</sup> MACP which was denied by the respondents vide letter dated 13.01.2022.

4. Learned counsel for the applicant further submitted that his case is squarely covered with judgment of AFT (RB), Chennai in O.A. No. 108 of 2016, **Ex Havildar M Sankarraaj vs. Union of India and others**, decided on 23.11.2017, AFT (RB) Chandigarh in OA No. 619 of 2013, **Daya Nand vs. Union of India and others**, decided on 21.05.2014 and AFT (RB) Lucknow in O.A. No. 261 of 2014, **Laxmi Narayain Singh vs. Union of India and Others**, decided on 09.10.2018 and pleaded that applicant should also be given benefit of 3<sup>rd</sup> MACP of Nb Sub grade being a similar case.

5. During the course of hearing, learned counsel for the applicant also submitted that Govt. of India, Ministry of Defence letter dated 30.05.2011 on Modified Assured Career Progression Scheme (MACPS) for PBOR of the Army is totally ultra vires as decided by the Hon'ble Supreme Court in Civil Appeal Diary No. 3744 of 2016, **Union of India and Ors, vs. Balbir Singh Turn & Anr**, decided on 08.12.2017 and therefore, applicant should made eligible for grant of 3<sup>rd</sup> MACP of Nb Sub grade.

6. Learned counsel for the respondents submitted that MACP scheme was made operational for the PBORs w.e.f. 01.09.2008 vide Govt. of India, Ministry of Defence 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.”

7. Learned counsel for the respondents further submitted that as per Govt. of India, Ministry of Defence letters dated 30.05.2011 and 13.06.2011, discipline criteria applicable for promotion will also be applicable for MACP upgradation as per AG’s Branch letter dated 10.10.1997 which states that *“an individual should not have more than three red ink entries during the entire service, not more than one red ink entry in last five years and no red ink entry in last one year for further promotion to the next higher grade”*.

8. Learned counsel for the respondents further submitted that applicant completed 24 years of service on 08.08.2005 and was awarded Severe Reprimand on 18.10.2005 (red ink entry) within one year for eligibility of MACP Nb Sub grade/within one year of retirement, hence applicant was debarred for one year for grant of promotion/MACP from the date of punishment awarded. Since the applicant was discharged from service on 31.03.2006, hence, he was not entitled for 3<sup>rd</sup> MACP on the ground of discipline criteria being awarded a red ink entry punishment within last one year of the entitlement of MACP.

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

10. We find that Govt. of India, Ministry of Defence introduced MACP scheme accepting recommendations of 6<sup>th</sup> CPC for granting three financial upgradations to JCOs/OR at an interval of 8, 16 & 24 years of continuous regular service. As per Govt. of India, Ministry of Defence letters dated 30.05.2011 and 13.06.2011, MACP scheme was operational w.e.f. 01.09.2008 and later on vide Govt. of India, Ministry of Defence letter dated 25.07.2018, date of effectiveness for grant of MACP was amended w.e.f. 01.01.2006 instead of 01.09.2008.

11. It is not disputed that applicant was enrolled in the Army on 08.08.1981 and was discharged from service on 31.03.2006 (AN) after rendering 24 years, 07 months and 24 days of service. The applicant was promoted to the rank of Havildar on 02.09.1999 and he completed 24 years of service on 08.08.2005. This implies that applicant was eligible for MACP-III on 08.08.2005 but since the benefit of MACP were made available w.e.f. 01.01.2006, he is entitled for MACP benefits w.e.f. 01.01.2006. The respondents contention that he was awarded a red ink entry punishment on 18.10.2005 which made him ineligible for grant of MACP-III as per policy letters dated 10.10.1997, 30.05.2011 and 13.06.2011, is unsustainable as the red ink entry punishment was awarded to the applicant on 18.10.2005 after completion of 24 years of service whereas applicant was eligible for MACP-III as on 08.08.2005. In view of the above, we find that

applicant is eligible for grant of MACP-III (Nb Sub grade) w.e.f. 01.01.2006 from the effective date of scheme.

12. In the result, Original Application is **allowed**. The impugned order passed by the respondents is set aside. The respondents are directed to consider the claim of the applicant for implementation of MACP-III (Naib Subedar grade) from 01.01.2006 and grant all consequential benefits of Nb Sub grade w.e.f. 01.01.2006. However, due to law of limitations settled by the Hon'ble Supreme Court in the case of ***Shiv Dass v. Union of India and others*** (2007 (3) SLR 445), the arrears of Nb Sub grade will be restricted to three years preceding the date of filing of the instant O.A. The date of filing of this O.A is 17.02.2022. The Respondents are directed to comply with the order within a period of four months from the date of receipt of certified copy of the order. Default will invite interest @ 8% per annum till actual payment.

13. No order as to costs.

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

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

Dated: September, 2022  
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