

Reserved
Court No.2
(Sl. No.11)

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 232 of 2022

Tuesday, this the 09th day of May, 2023

Hon'ble Mr. Justice Anil Kumar, Member (J)

Hon'ble Maj Gen Sanjay Singh, Member (A)

No. 14545396A, Ex Havildar Jai Prakash Son of Shri Aditya Prasad, Village-Bamhaniyav, Post-Raipur, Tahsil-Sakaldiha, District-Chandauli, UP-232105.

.....Applicant

Ld. Counsel for : **Shri Vinay Pandey**, Advocate
Applicant **Shri Manoj Kumar Awasthi**, Advocate

Versus

1. The Union of India, through the Secretary, Ministry of Defence, DHQ PO – New Delhi – 11.
2. The Chief of the Army Staff, Integrated Headquarters of the Ministry of Defence (Army), New Delhi-11.
3. The Officer-in-Charge, Records, The EME Records, Pin- 900453, C/o 56 APO.
4. Pay and Account Office (Ors) The EME Records, Pin- 900453, C/o 56 APO.
5. Principal Controller of Defence Accounts, Draupadi Ghat, Allahabad, (UP)

...Respondents

Ld. Counsel for the : **Shri Ram Saran Awasthi**, Advocate
Respondents Central Govt Counsel

ORDER

1. This Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 whereby the applicant has claimed the following reliefs:-

(a) Issue/ pass an order or directions of appropriate nature for grant of benefit of 3rd MACP by quashing the EME Records letter bearing Number 2708/RTI Cell/89 sated 04 Feb 2020.

(b) Issue/ pass an order or direction of appropriate nature to the respondents to revise the pensionary benefits after grant of 3rd 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) Allowing this Original Application with cost.

2. Rejoinder affidavit filed by learned counsel for the applicant is taken on record.

3. The factual matrix on record is that the applicant was enrolled in the Army on 29.03.1982 and was discharged from service on 31.03.2006 (AN) under the provisions of Rule 13 (3) III (i) of Army Rules 1954, on completion of terms engagement. The applicant represented his case for grant of 3rd MACP (Nb Sub) which was rejected by the respondents vide letter dated 04.02.2020 on the ground of red ink entries earned by him in the last five years of his service. As per policy of the respondents for grant of ACP/MACP, a person should not have earned more than three red ink entries throughout his service and one red ink entry in the year in

which his MACP falls due. Being aggrieved, the applicant has filed present original application for grant of benefit of 3rd MACP of Nb Sub grade.

4. Learned counsel for the applicant submitted that applicant was enrolled in the Army on 29.03.1982 and was discharged from service on 31.03.2006 (AN) under the provisions of Rule 13 (3) III (i) of Army Rules, 1954 after rendering more than 24 years of service. His further submission is that since applicant has completed 24 years of service, he is entitled to 3rd MACP of Nb Sub grade

5. 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 Sankarraj 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 3rd MACP of Nb Sub grade being a similar case.

6. 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 be made eligible for grant of 3rd MACP of Nb Sub grade.

7. On the other hand, 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 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.”

8. 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 and 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”*.

9. Learned counsel for the respondents further submitted that applicant completed 24 years of service on 28.03.2006 and he was awarded Severe

Reprimand on 03.07.2001, 18.3.2002, and 05.07.2002 (total three red ink entries) during last five years of his service therefore in terms of policy letter dated 10.10.1997 he is not eligible for grant of MACP. He pleaded for dismissal of O.A.

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

11. We find that Govt. of India, Ministry of Defence introduced MACP scheme accepting recommendations of 6th 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.

12. It is not disputed that applicant was enrolled in the Army on 29.03.1982 and was discharged from service on 31.03.2006 (AN) after rendering 24 years and 03 days of service. The applicant was promoted to the rank of Naik on 01.04.1995 and Havildar on 01.09.1997 and he completed 24 years of service on 29.03.2006. This implies that applicant was eligible for MACP-III on 29.03.2006 but since the applicant was awarded three red ink entry punishments on 03.07.2001, 18.3.2002, and 05.07.2002 which made him ineligible for grant of MACP-III as per policy letters dated 10.10.1997, 30.05.2011 and 13.06.2011, we are of the view

that applicant is not eligible for grant of MACP-III (Nb Sub grade) w.e.f. 29.03.2006.

13. In the result, Original Application has no merit, deserves to be dismissed and is accordingly **dismissed**.

14. No order as to costs.

15. Pending Misc. Application(s), if any, shall be treated to have been disposed off.

(Maj Gen Sanjay Singh)
Member (A)

Dated: May, 2023

rathore

(Justice Anil Kumar)
Member (J)