

**Reserved**  
**Court No.2**  
**(Sl. No.17)**

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

**Original Application No. 905 of 2022**

Friday, this the 26<sup>th</sup> day of May, 2023

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

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

No. 3201871Y, Ex LNK Sunder, S/o Shri Jawahar Singh, of the JAT Regiment, Bareilly and presently r/o Parasram Nagar, Bhakti Ghari Road (line Par) Tundla, District Ferozabad (UP)-283204.

.....Applicant

Ld. Counsel for : **Shri Ashok Singh**, Advocate  
Applicant **Shri Vikas Singh Chauhan**, Advocate

Versus

1. The Union of India, through the Secretary, Govt. of India, Ministry of Defence, New Delhi – 110011.
2. The Chief of the Army Staff, Integrated Headquarters of the Ministry of Defence (Army) DHQ, PO-New Delhi-110011.
3. The Officer-in-Charge, Records, The JAT Regiment, Pin- 900496, C/o 56 APO.
4. Commanding Officer 9 JAT, PIN-911209, C/o 56 APO.
5. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Prayagraj, (UP)

...Respondents

Ld. Counsel for the : **Shri Rajesh Shukla**, 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) To Quash/set aside the impugned order dated 21 Sep 2022 passed by the OIC, Records the JAT Regiment which has annexed with compilation No.-I as a Annexure No. A-1 t this present application and passed the appropriate order to the authority concerned to grant the pensionary benefits at the rate of MACP-II grade w.e.f. 03 Apr 2021 to onwards, as per the Part-II order No. 0/0212/0001 & 0002/2022 dated 19 Mar 2022 published by the Commanding Officer, 9 JAT Unit, under the provisions of Special Army Instructions 1/S/2008.*

*(b) Issue an appropriate order or direction as this Hon'ble Tribunal may deem fit and proper in the demand of justice.*

*(c) Issue an order or direction awarding the cost of the application together with all legal expenses incurred by the applicants.*

2. The factual matrix on record is that the applicant was enrolled in the Army on 21.03.2005 and was discharged from service on 31.03.2022 (AN) on completion of terms engagement. The applicant represented his case for grant of 1<sup>st</sup> and 2<sup>nd</sup> MACP (Nk & Hav) which was rejected by the respondents vide letter dated 21.09.2022 on the ground of not meeting criteria for MACP in accordance with IHQ of MoD (Army) letter dated 13.06.2011. 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 1<sup>st</sup> & 2<sup>nd</sup> MACP of Nk & Hav grade.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Army on 21.03.2005 and was discharged from service on 31.03.2022 (AN), after rendering more than 17 years and 10 days service. His further submission is that applicant's 1<sup>st</sup> and 2<sup>nd</sup> MACP of Nk and Hav grade were adjusted by the PAO (OR), JAT Regiment in the monthly statement of account for the month ending 12/2021 to 02/2022 w.e.f. 03.04.2013 and 03.04.2021 respectively without notifying of Part II Order. Thereafter, 9 JAT published the personal occurrence with regard to MACPs 1<sup>st</sup> Nk grade w.e.f 03.04.2013 and 2<sup>nd</sup> Hav grade w.e.f 03.04.2021 vide Part II Order Nos 0/0212/0001 & 0002 and 0003/2022 dated 19.03.2022. His further submission is that the aforesaid Part-II Order granting 1<sup>st</sup> and 2<sup>nd</sup> MACP were cancelled vide Part II Order No 0/0211/0001/2022 dated 19.03.2022. After retirement from service applicant was granted service pension w.e.f. 01.04.2022 vide PPO No 202202200346 without granting benefits of 1<sup>st</sup> and 2<sup>nd</sup> MACP.

4. Learned counsel for the applicant further submitted that his representation dated 22.08.2022 submitted to Records, The JAT, Regiment was rejected vide order dated 21.09.2022 due to applicant not meeting criteria for MACP in accordance with IHQ of MoD (Army) letter No B/33513/ACP/AG/PS-2 (c) dated 13.06.2011. It was further submitted that since the applicant has rendered 17 years and 10 days of service, he is entitled for grant of 1<sup>st</sup> and 2<sup>nd</sup> MACP and order rejecting MACP being illegal and erroneous in nature deserves to be set aside.

5. 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 up-gradations under the MACPs, counted from the direct entry grade on completion of 8, 16 and 24 years service.*

*(b) Financial up-gradation 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.”*

6. 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 up-gradation 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”*.

7. Learned counsel for the respondents further submitted that during the course of his service applicant was awarded following punishments:-

S No	Date of Offence	AA Sec	Date of Award	Punishment Awarded
1.	22.02.2008	41 (2)	16.06.2008	14 days Rigorous Imprisonment
2.	30.09.2008	39 (a)	11.11.2008	07 days Rigorous imprisonment
3.	22.12.2008	63	10.01.2009	07 days Rigorous Imprisonment

4.	05.10.2019	63	04.11.2019	14 days pay fine
5.	21.11.2020	48	10.03.2021	15 days pay fine which was set aside on 01.04.2021

8. Learned counsel for the respondents further submitted that since applicant was awarded punishment during last five years of his service, therefore in terms of policy letter dated 10.10.1997 and 13.06.2011 applicant is not eligible for grant of MACP. It was further pleaded that as per Para 20 of Integrated Headquarters of Ministry of Defence (Army) letter dated 13.06.2011, it is specified that “***Discipline criteria applicable for promotion will apply for Modified Assured Career Progression (MACP) up-gradation, an individual should meet the discipline criteria of promotion***” which stipulates as under:-

*“A JCO/NCO who has been committed for an offence in Army Action Section 34, 35, 36, 37 and Army Act Section 41 (2) will be permanently debarred for the further promotion”*

9. It was pleaded that since the applicant is not meeting the disciplinary criteria he was rightly not granted benefits of MACP. He pleaded for dismissal of O.A.

10. Heard Shri Ashok Singh, learned counsel for the applicant and Shri Rajesh Shukla, learned counsel for the respondents and perused the record.

11. 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/ORs 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 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 21.03.2005 and was discharged from service on 31.03.2022 (AN) after rendering 17 years and 10 days service. The applicant was not granted 1<sup>st</sup> and 2<sup>nd</sup> MACP as he was not meeting discipline criteria as per policy letters dated 10.10.1997 and 13.06.2011. Also, he was awarded 14 days Rigorous Imprisonment under Army Act Section 41 (2) on 16.06.2008 which debarred him permanently for further promotion vide Para 20 of policy letter dated 13.06.2011 as mentioned in Para 7 *ibid*.

13. In view of the above applicant is not eligible for grant of MACP. In the result, Original Application is **dismissed**.

14. No order as to costs.

15. Miscellaneous application (s), pending if any, stand disposed off.

**(Maj Gen Sanjay Singh)**  
**Member (A)**

Dated: 26.5.2023

*rathore/rspal*

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