

Reserved
Court No. 2

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No 43 of 2023

Monday, this the 9th day of October, 2023

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

Hon'ble Lt Gen Anil Puri, Member (A)

Ex No. 3008281Y Nk (MACP) Warish Husain
S/o Abrar Husain
R/o Village and Post – Lachhipur, Tehsil - Raniganj,
District – Pratapgarh (UP)

..... Applicant

Ld. Counsel for the Applicant: **Shri Bhanu Pratap Singh Chauhan,**
Advocate holding brief of
Shri Vinay Pandey, Advocate

Versus

1. Union of India, through, Secretary Ministry of Defence (Army),
DHQ PO - New Delhi-11.
2. Chief of the Army Staff, Army Headquarters, Sena Bhawan,
New Delhi.
3. The Officer-in-Charge Records, The Rajput Regiment, PIN
900427, C/o 56 APO.
4. Principal Controller of Defence Accounts (Pension), Draupadi
Ghat, Prayagraj, (UP).

..... Respondents

Ld. Counsel for the Respondents : **Shri Arvind Kumar 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) Issue/pass an order or direction of appropriate nature to direct the respondent to grant the benefit of Second MACP to the applicant with effect from 22 December 2020.

(b) 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.

(c) Issue/pass any other order or direction as this Hon’ble Tribunal may fit in the circumstances of the case.

(d) Allow this application with costs.”

2. The factual matrix on record is that the applicant was enrolled in the Indian Army on 21.12.2004. He was granted 1st Modified Assured Career Progression (MACP) on 21.12.2012 on completion of 8 years of continuous service. The applicant was discharged from service on 31.12.2021 under Rule 13 (3) III (i) of Army Rules 1954 after rendering 17 years & 11 months of service and was granted service pension @ Rs. 21,025/- per month w.e.f. 01.01.2022 vide PPO No. 206202100841 dated 08.12.2021. Applicant submitted a legal notice dated 04.02.2022 through Vinay Pandey & Associate, Advocate for grant of 2nd MACP which is not replied till date. Hence, the applicant has filed present original application for grant of 2nd MACP on completion of 16 years of service.

3. Learned counsel for the applicant submitted that after completion of 8 years of service, applicant was granted benefit of 1st MACP but after completion of 16 years of service he has not been awarded benefit of 2nd MACP as applicable as per Govt of India letter

of May 2011 as the applicant retired from service after completion of 17 years and 11 days of service. Learned counsel for the applicant placed reliance on the judgment of AFT, Kochi Bench in O.A. No. 170 of 2016, ***Ex Hav Zubair P vs. Union of India***, decided on 21.02.2017 and AFT, Circuit Bench, Nainital judgment in O.A. No. 178 of 2022, ***Naresh Nautiyal vs. Union of India and Others***, decided on 07.09.2022 and pleaded that applicant should also be given benefit of 2nd MACP being a similar case.

4. 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 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.”

5. Learned counsel for the respondents further submitted that the applicant was enrolled in the Indian Army on 21.12.2004. He was granted 1st Modified Assured Career Progression (MACP) on 21.12.2012 on completion of 8 years of continuous service. He further

submitted that applicant was detailed to attend Sep/Lance Naik to Naik promotion cadre conducted on 13.11.2017 to 28.12.2017 (1st attempt), 06.08.2018 to 27.09.2018 (2nd attempt) and 15.04.2019 to 14.06.2019 (3rd attempt), however, he rendered his unwillingness for said promotion cadres in all three chances.

6. Learned counsel for the respondents also stated that as per Para 15 of Appendix 'A' of Army Headquarters letter dated 13.06.2011 passing of promotion cadre is mandatory for promotion. As such, unwillingness to attend promotion cadre amounts to unwillingness/refusal to promotion as per Army Headquarters letter dated 11.07.2018. Since, the applicant has rendered his unwillingness certificate for the said promotion cadre in all three chances given to him, he was not eligible for grant of 2nd MACP.

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

8. In the instant case, applicant was enrolled in the Indian Army on 21.12.2004. He was granted 1st Modified Assured Career Progression (MACP) on 21.12.2012 on completion of 8 years of continuous service. The applicant was discharged from service on 31.12.2021 after rendering 17 years & 11 months of service. The applicant submitted a legal notice for grant of 2nd MACP on completion of 16 years of service but no relief was granted to the applicant.

9. MACP scheme was made operational for the PBORs w.e.f. 01.09.2008 vide Govt. of India letter dated 30.05.2011 and administrative instructions of this effect have been issued vide IHQ of

MoD (Army) letter dated 13.06.2011 and this scheme was later on made effective w.e.f. 01.01.2006 by which three financial upgradation were to be granted to PBORs on completion of 8, 16 and 24 years of service respectively. However, there was also a provision that if an individual is unwilling to undergo promotion cadre, he will not be granted the benefit of scheme until and unless he passes the promotion cadre course and unwillingness submitted by an individual will amount to denial of promotion as well as MACP due to him.

10. The applicant has given unwillingness on all three occasions and in this regard Unwillingness Certificates have been filed alongwith counter affidavit. In third Unwillingness Certificate dated 06.05.2019, it is clearly mentioned in para 3 of the certificate that applicant is aware that he will not be granted benefit of MACP by giving this Unwillingness Certificate. Unwillingness Certificate dated 06.05.2019 is reproduced as under:-

“UNWILLINCESS FOR PROMOTION CADRE AT THIS TIME

1. I, No 3008281Y Rank Sep Name Warish Husain have been detailed to Sep/LNk to Nk cadre wef 15 Apr 19 to 14 Jun 19.
2. I wish to state that I am unwilling to attend the said cadre and am unwilling for promotion this time.
3. I am aware that this unwillingness for promotion at this time will deny MACP as due to me.

Sd/- x x x
(Signature of indl)
No 3008281Y
Rank Sep
Name Warish Husain
Dated 03 May 2019

Witness No 1

Sd/- x x x
(Signature of indl)
No 3012857A
Rank Sep
Name Gaurav
Dated 06.05.19

Witness No 1

Sd/- x x x
 (Signature of indl)
 No 3010707N
 Rank Nk
 Name Brijesh Tiwari
 Dated 06.05.2019

COUNTERSIGNED

Station : c/o 56 APO

Sd/- x xx
 OC Defence & Emp Coy
 HQ 4 RAPID

Dated : 06 May 2019”

11. We find that applicant has not passed promotion cadre from L/Nk to Naik after being given three chances to attend promotion cadre but rendered his unwillingness in writing which debarred him from further promotion being a mandatory requirement for grant of benefit of MACP as per Govt. policy letters dated 13.06.2011 and 11.07.2018. The facts of the case laws relied by the applicant in para 3 above, are different from the present case. Hence, we are of the view that his claim for grant of 2nd MACP without fulfilling mandatory criteria is not sustainable and have rightly been rejected by the respondents which need no interference.

12. In view of above, Original Application has no merit, it deserves to be dismissed and is accordingly **dismissed**.

13. No order as to costs.

14. Misc. Application(s), pending if any, shall be treated to have been disposed of.

(Lt Gen Anil Puri)
Member (A)

Dated: October, 2023
 Rsp/SB

(Justice Anil Kumar)
Member (J)