

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW  
(CIRCUIT BENCH NAINITAL)**

**Original Application No 156 of 2022**

Wednesday, this the 7<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. 4066552M Ex Hav Chakradhar Prasad Painuly  
S/o Shri Daya Ram Painuly  
R/o Village & Post – Dhalwala (Muni Ki Reti),  
District – Tehri Garhwal-249137, Uttarakhand

..... Applicant

Ld. Counsel for the Applicant: **Shri Kishore Rai**, Advocate

Versus

1. Union of India, Ministry of Defence through its Secretary, South Block, New Delhi-110011.
2. P.C.D.A. (P) Allahabad, Uttar Pradesh.
3. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence (Army), South Block, New Delhi – 110011.
4. Senior Record Officer Records The Garhwal Rifles, Lansdowne, Pauri Garhwal, C/o 56 APO.
5. Commanding Officer, 4 Garhwal Rifles, PIN-910704, C/o 99 APO.

..... Respondents

Ld. Counsel for the Respondents : **Shri Neeraj Upreti**,  
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:-

- “i. A direction to quash the order dated 15.06.2021 passed by respondent No. 4 by which the regularization of the over staying leave period of the applicant has been rejected by respondent No. 4.

- ii. A direction to the respondents to grant the benefits of III Modified Assured Career progression on completion of 24 years of service on 26.11.2007.
- iii. Summon the entire records of the applicant pertaining to computation of the benefits to the applicant under Modified Assured Career Progression Scheme.
- iv. Any other relief to which the applicant is found entitled may also very kindly be granted to the applicant.”

2. The factual matrix on record is that the applicant was enrolled in the Army on 26.11.1983 and was discharged from service on 30.11.2007 (AN) under the provisions of Rule 13 (3) III (i) of Army Rules, 1954 after rendering more than 24 years of service (including 11 days NQS). The applicant represented his case for grant of 3<sup>rd</sup> MACP (Nb Sub) which was rejected vide impugned letter dated 15.06.2021 on the ground that there is 11 days non qualifying service in 24 years as applicant has served 23 years and 359 days of qualifying service. Being aggrieved, the applicant has filed present original application for grant of benefit of 3<sup>rd</sup> MACP of Nb Sub grade.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Army on 26.11.1983 and was discharged from service on 30.11.2007 (AN) under the provisions of Rule 13 (3) III (i) of Army Rules, 1954 after rendering more than 24 years of service. Accordingly, he is in receipt of full service pension for the rank of Havildar. As per 6<sup>th</sup> CPC, MACP scheme is applicable for grant of three financial upgradations at intervals of 8, 16 and 24 years of continuous service vide IHQ of MoD (Army) letter dated 30.05.2011

and is effective w.e.f. 01.01.2006. The applicant after rendering 24 years and 5 days of service in the rank of Havildar is entitled for the benefit of MACP-III. The applicant overstayed leave due to his own sickness/hospital admission from 22.04.2006 to 02.05.2006. The applicant represented his case for grant of 3<sup>rd</sup> MACP (Nb Sub) to respondent No. 4&5 which was rejected vide impugned letter dated 15.06.2021 stating that OSL period from 22.04.2006 to 02.05.2006 has not been regularized by applicant's unit which was treated as non qualifying service and hence, applicant has not completed 24 years of service and he is not eligible for grant of 3<sup>rd</sup> MACP of Nb Sub grade on the ground that there is 11 days non qualifying service (short fall of 6 days qualifying service in 24 years as applicant has served 23 years and 359 days of qualifying service.

4. Learned counsel for the applicant further submitted that respondent No. 4/5 vide part II Order dated 22.04.2021 has regularized the Over Staying Leave period, hence, period of 11 days NQS should be condoned under the provisions of para 18(a) and 49 of Pension Regulations for the Army Part-1 (2008) and period of OSL to be added in his service treating his total service 24 years as rendered by him. Denial of benefit of 3<sup>rd</sup> MACP saying shortfall of 11 days NQS would tantamount to a double jeopardy as if it was not regularised then he was not paid pay and allowances for the period of OSL due to award of punishment of 'Severe Reprimand' which is violation of Article 20 of the Constitution of India. He placed reliance on the judgment of AFT (RB), Lucknow in O.A. No. 603 of 2021, **Ex**

**Hav Mahendra Kumar Jena vs. Union of India & Ors**, decided on 19.01.2022 and pleaded that applicant's case is similar in nature, therefore, he is also eligible for grant of 3<sup>rd</sup> MCAP (Nb Sub Grade).

5. Learned counsel for the respondents submitted that applicant was enrolled in the Army on 26.11.1983 and was discharged from service on 30.11.2007 (AN) under the provisions of Rule 13 (3) III (i) of Army Rules, 1954 after rendering 23 years and 359 days of service. He was granted service pension in the rank of Havildar vide PPO No. S/037746/2007. The applicant Over Stayed Leave for 11 days from 22.04.2006 to 02.05.2006 for which he was awarded punishment of 'Severe Reprimand'. Though, the unit of the applicant regularised 11 days OSL of the applicant vide Part II Order No. 0/0231/2021 and 0/0233/2021 but the same was rejected by Garhwal Rifles Records vide letter dated 15.06.2021 as per the provisions of Leave Rules, 1976. As per IHQ of MoD (Army) letter dated 10.10.1997, an individual will not be considered for promotion if he is awarded with more than one red ink entry in the last five years. Since the applicant has been granted two red ink entries in his last five years of service, therefore, he is not eligible for MACPs upgradation due to non fulfilling of discipline criteria.

6. Learned counsel for the respondents further 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 which was later on made effective w.e.f. 01.01.2006 by the judgment of the Hon'ble Apex Court. As per Govt. of India, Ministry of Defence letter

dated 30.05.2011 as amended vide Govt. of India, Ministry of Defence letter dated 25.07.2018, MACP-III is granted to those who have either completed eight years of service in the rank of Havildar or have completed 24 years of qualifying service. Since the applicant at the time of discharge from service has not completed 24 years of qualifying service, he is not entitled for grant of MACP-III as per existing policy.

7. Learned counsel for the respondents also submitted that Para 21 and Para 122 (a) (iii) of Pension Regulations for the Army Part-1 (2008) stipulate that any period of unauthorised absence unless pay and allowances are admitted for the period of absence shall not qualify for pension or gratuity. In this case, the pay and allowances for the period w.e.f. 24.04.2006 to 02.05.2006 being unauthorised period of absence was not regularised and pay and allowances were not paid to him for the period of absence. The same was forfeited being unauthorised absence and was counted as Non Qualifying Service (NQS). He also submitted that there is no provision for condonation of service for grant of MACP. He pleaded for dismissal of O.A.

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

9. We find that MACP scheme is effective w.e.f. 01.01.2006 for grant of three financial upgradations at intervals of 8, 16 and 24 years of service. In the present case, applicant was discharged from service in the rank of Havildar on completion of terms of engagement of service after rendering 24 years and 5 days of service in which there

was NQS of 11 days on account of overstaying of leave for which applicant was not paid pay and allowances for the period of 11 days absence.

10. So far as prayer of the applicant for condonation of short fall of 11 days in order to become eligible to get MACP-III benefit after rendering 24 years of service is concerned, the Court, keeping in view the provisions of para 18 of Pension Regulations for the Army, Part-1 (2008) for calculating qualifying service are equally applicable for grant of MACP, we find no impediment in computing his qualifying service as 24 years for the said purpose of granting 3<sup>rd</sup> MACP (Nb Sub Grade), as well. Hence, as per provisions of para 18 of Pension Regulations for the Army, Part-1 (2008), IHQ of MoD (Army) letters No. B/33513/ACP/AG/PS-2(c) dated 13 June 2011 and even No. dated 03.06.2016, we are of the view to condone shortfall of 11 days NQS. The applicant's total qualifying service as per respondents is 23 years and 359 days, hence, 11 days NQS is condoned and the applicant is held entitled to get the benefit of MACP-III on the date he has completed 24 years of service, i.e. 26.11.2007.

11. 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 grant of notional promotion to the rank of Naib Subedar giving the benefit of MACP-III (Naib Subedar grade) from the date of discharge from service with all consequential/ pensionary benefits of the rank of Naib Subedar and issue a Corrigendum PPO accordingly. However, due to law of

limitations settled by the Hon'ble Supreme Court in the case of **Shiv Dass vs Union of India and Others** in Civil Appeal No 274 of 2007, decided on 18.01.2007, the arrears 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 23.02.2022. 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.

12. No order as to costs.

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

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

Dated: September, 2022

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