

COURT NO. 1, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

85.

OA 1457/2021 with MA 1315/2021

Ex Lnk Arjun Singh

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Shri Virender Singh Kadian, Advocate

For Respondents : Dr. VS Mahndiyan, Advocate

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON

HON'BLE LT. GEN. C P MOHANTY, MEMBER (A)

O R D E R

08.08.2023

Seeking grant of MACP benefits, the applicant has invoked the jurisdiction of this Tribunal and it is the case of the applicant that the benefit of second MACP in the rank of Havildar has been denied to him by the impugned order dated 25.08.2020 and seeking interference into the matter, the application has been filed.

2. The applicant was enrolled in the Indian Army on 21.07.2003 and was discharged from service on 31.07.2020 on completing 17 years and 10 days of service. On 30.05.2011, the "Modified Assured Career Progression Scheme (MACPs)" was issued by the Government of India, Ministry of Defence vide letter dated 30.05.2011 and 13.06.2011 respectively. According to the said Scheme, there is a provision to give benefit of financial up-gradation to the

next rank after 08 years/16 years/24 years of stagnation in a particular grade. It is the case of the applicant that on 07.08.2020 the applicant submitted a representation for grant of second MACP after completing 16 years of service. The same was not considered and by the impugned order, the applicant has been intimated that the applicant had submitted his unwillingness certificate when promotion was offered to him, he was not eligible for the second MACP as per the policy. Subsequent representation also having been rejected, the applicant has approached this Tribunal. It is the case of the applicant that by virtue of the MACP scheme, a right has accrued to the applicant to claim the benefit of up-gradation as he was not granted any promotion and stagnated in one post for 16 years. It is the case of the applicant that on the ground of unwillingness to claim promotion, the benefit of up-gradation cannot be denied. Shri Virender Singh Kadian, referring to various judgments passed by the Regional Bench, Kochi of this Tribunal on 21.02.2007 in **O.A No. 170/2016 Ex Hav Zubair P v. UoI** (Annexure A5), and Lucknow Bench of this Tribunal in **O.A No. 153/2016 Ex Hav Vrajesh Kumar Shankhdhar v. UoI** (Annexure A6) Para 5.5 and 5.6 and 5.7 claimed the benefit.

3. However, the respondents have refuted the aforesaid contention and it is pointed out by them that under the Scheme for grant of benefit of MACP an employee who is entitled for grant of regular promotion refuses to undergo the promotion cadre or the promotion itself, is not entitled to the benefit of MACP scheme. They referred to the clarification issued in this regard in Para 21 of the MACP implemented in consequence of the 6th CPC recommendation vide circular dated 13.06.2011 and pointed out that under the clause effect of refusal for promotion in Para 21 of the aforesaid circular it is clearly stipulated that if an individual refuses promotion MACP will be denied. Learned counsel for the respondents invited our attention to a judgment of the Hon'ble Supreme Court in the case of **Union of India and others v. Manju Arora and another** in (CA 7027-7028) of 2009 decided on 03.01.2022 and a series of judgments decided by the RBs of this Tribunal in OA No. 05/2020 etc at Regional Bench, Jabalpur on 27th April, 2022 wherein identical petitions had been dismissed.

4. We have heard the learned counsel for the parties at length and perused the records.

5. The only issue involved for our consideration is, whether once an employee refuses to undertake the promotion cadre or promotion itself by expressing his unwillingness whether he is entitled for grant of promotion or not.

6. The issue is no more res integra. It has been decided by the Hon'ble Supreme Court in the case of **Union of India and others v. Manju Arora and another** has been followed consistently by this Tribunal in the case of **Ex Nk (T.S) Vijay kumar v. Union of India and others**. In all these cases, from Para 5 onwards, the issue has been considered and after taking note of the scheme for MACP and various other circulars applicable in this regard up to Para 10, from Para 11 onwards, reliance has been placed on the law laid down by the Hon'ble Supreme Court in the case of Manju Arora (supra) and the issue decided from Para 11 onwards in the following manner:

“11. As can be seen, the benefit of the financial upgradation under the ACP Scheme shall be available only if regular promotion during the prescribed intervals, 12 years and 24 years, could not be availed by an employee. While Condition no. 5.1 is clear to this effect, the Division Bench unnecessarily referred to condition No. 10 to hold in favor of employees who have refused promotion offered to them. The Court was of the opinion that the employees concerned are entitled to one financial upgradation, even if they turn down the offer of promotion, as non-acceptance of such promotion would impact only their

second upgradation. With such finding, the respondents were held entitled to the relief under the ACP Scheme, although it was a case of refusal of promotion offered to the employee.

12. The learned counsel for the appellant has taken us through the relevant conditions in the ACP Scheme notified on 9.8.1999 and more particularly clause 5.1 and Clause 10 thereof. She has also brought to the notice of the Court, the promotions offered to the employees and their refusal to accept the promotion for their own personal reasons, such as family needs or movement to another station etc.

13. Reading of the ACP Scheme shows that financial upgradation would accrue to an employee only if no regular promotions have been received by her/him at the prescribed intervals of 12 and 24 years respectively. In the entire service career, an employee is entitled to financial upgradation if the concerned employee had to suffer stagnation in the same post without benefit of any regular promotion and, as earlier stated, the O.M. dated 9.8.1999 was introduced as a "safety net" to deal with the problems of genuine stagnation and hardship faced by the employees due to lack of adequate promotional avenues. But can the benefit of the Scheme be claimed by an employee when she, despite offer of regular promotion, refuses to accept the same and chooses to remain in the existing grade of her own volition?

14. As can be seen from the records, Manju Arora and Suman Lata Bhatia were offered promotion to higher grade on multiple occasions, but they refused the same and chose to continue in the existing pay scale. The purport of the O.M. dated 9.8.1999 was subsequently clarified by the O.M. dated 18.7.2001 where it was specifically provided that an employee who had been offered regular vacancy based promotion before grant of ACP benefit and the regular promotion was refused, she/he become ineligible to the grant of the ACP benefits. Even without the clarificatory notification dated 18.7.2001, a plain reading of clause 5.1 of the O.M. dated 9.8.1999 makes it abundantly clear that an employee who has opted to remain in the existing grade, by refusing offer of promotion, forfeits the rights to ACP benefits and such employee, on account of refusal, can be considered for regular promotion only after necessary debarment period is over.

7. Keeping in view the aforesaid, we find no reason to make any indulgence into the matter and the issue stands

decided not only by the Hon'ble Supreme Court, but also by this Tribunal and even the Central Administrative Tribunal, as is evident from the decision of the Hon'ble Supreme Court.

8. The O.A accordingly stands dismissed.

9. No order as to costs.

[RAJENDRA MENON]
CHAIRPERSON

[C P MOHANTY]
MEMBER (A)

/jyoti/