COURT No.2
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

106.

OA 1723/2019

Ex Hav Naresh Kumar ….. Applicant
VERSUS
Union of India and Ors. ….. Respondents

For Applicant : Mr. Virender Singh Kadian, Advocate
For Respondents : Mr. Prabodh Kumar, Sr. CGSC
Capt Isha Mehrotra, OIC, Legal Cell

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE MS. RASIKA CHAUBE, MEMBER (A)

O R D E R
01.08.2025

The applicant vide the present OA makes the following prayers:-

> *"(a) Direct respondents to grant pay and allowances of rank of Naib Subedar Grade Pay Rs 4200/- wef 28.09.2007 to till date of retirement and fix service pension wef 01.10.2007 and retiral benefits by granting benefit of 3rd MACP of the rank of Naib Subedar to the applicant in terms of Govt of India, Min of Defence letter No. 14(1)/99-D(AG) dated 25.07.2018 and to pay the due arrears with interest @12% p.a. And/or*
> *(b) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case."*

2. The premise of the applicant through the OA is to the effect that the Modified Assured Career Progression(MACP) Scheme issued by the GoI, MoD vide letter no. 14(1)/99-D(AG) dated 30.05.2011 and IHQ of MoD(Army) vide letter no. B/33513/ACP/AG/PS-2(c) dated 13.06.2011, in view of the verdict of the Hon'ble Supreme Court in ***UOI & Ors. vs. Balbir***

Singh Turn and Anr (2018) 11 SCC 99 became effective wef 01.01.2006 instead of 01.09.2008. The applicant in the instant case was enrolled on 28.09.1983 in the Indian Army and was discharged on 30.09.2007. It is essential to observe that vide judgment dated 22.08.2022 of the Hon'ble Supreme Court in ***UOI & Ors. Ex HC/GD Virender Singh*** reported in 2022 LiveLaw (SC) 699 vide Para-14, it has been observed to the effect:-

> *"14. In view of the aforesaid discussion, the appeals filed by the Union of India are partly allowed and impugned judgments, to the extent they hold that the MACP Scheme applies with effect from 1.1.2006 and that under the MACP Scheme the employees are entitled to financial upgradation equivalent to the next promotional post, are set aside. MACP Scheme is applicable with effect from 1.9.2008 and as per the MACP Scheme, the entitlement is to financial upgradation equivalent to the immediate next grade pay in the hierarchy of the pay bands as stated in Section 1, Part A of the First Schedule to the Central Civil Services (Revised Pay) Rules, 2008. The third issue, which relates to the fulfilment of pre-promotional norms for grant of financial upgradation, is decided against the appellant-Union of India to the extent that this would not be insisted in the case of the Central Armed Forces personnel where, for administrative or other reasons, they could not be sent or undergo the pre-promotional course.",*

and thereby categorically observing to the effect that the appeals filed by the UOI were partly allowed and the impugned judgments therein to the extent that they held that the MACP Scheme applied wef 01.01.2006 and that under the MACP scheme, the employees were entitled to financial upgradation equivalent to the next promotional post were set aside, **with it having been categorically observed to the effect that the MACP**

scheme is applicable wef 01.09.2008 and as per the MACP scheme, the entitlement to financial upgradation equivalent to the immediate next grade pay in the hierarchy of the pay bands as stated be in Section 1, Part A of the First Schedule to the Central Civil Services (Revised Pay) Rules, 2008.

3. It is further essential to observe that the observations of the Hon'ble Supreme Court in Paras-8 to 11 in ***UOI & Ors. Ex HC/GD Virender Singh*** (Supra) read to the effect:-

> *"8. The aforesaid paragraphs refer to the decision by a three Judge Bench of this Court in M.V. Mohanan Nair (supra), which we have quoted and referred to above. It also refers to a two Judge Bench decision in the case of Union of India and Others v. Balbir Singh Turn and Another,6 which holds that notwithstanding O.M. dated 19th May 2009 stating that the MACP Scheme would be applicable with effect from 1st September 2008, the MACP Scheme would be applicable with effect from 1st January 2006. The judgment in Balbir Singh Turn (supra) reasons that the Central Government, on 30th August 2008, had resolved to accept the recommendations of the Sixth Central Pay Commission with regard to the personnel below the officer rank, subject to certain modifications. Reliance was placed upon clause (i) of the Resolution of the Central Government dated 30th August 2008, which reads as under:*
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> > *"(i) Implementation of the revised pay structure of pay bands and grade pay, as well as pension, with effect from 1-1-2006 and revised rates of allowances (except dearness allowance/ relief) with effect from 1-9-2008;"*
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> *It also refers to clause (ix) of the Resolution which reads as follows:*
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> > *"(ix) Grant of 3 ACP upgradations after 8, 16 and 24 years of service to PBORs;"*
>
> *Thereafter, the judgment in Balbir Singh Turn (supra) says that the Sixth Central Pay Commission had recommended grant of benefit of the ACP Scheme after 10 and 20 years of service, but the Central Government had decided to grant ACP*

Scheme after 8, 16 and 24 years of service. Lastly, it holds that perusal of clause (i) of the Resolution dated 30th August 2008 indicates that the Central Government had decided to implement the revised pay scales of pay bands and grade pay, as well as pension, with effect from 1st January 2006. The second part of the said clause lays down that all allowances, except dearness allowance/relief, will be effective from 1st September 2008. The MACP Scheme, being a part of the pay structure and having effect on the grade pay of the employees, cannot be said to be part of allowances. Benefit of MACP Scheme, if given to employees, would affect their pension and thereby also means that it has to be applied and given effect from 1st January 2006 as it is a part of the pay structure.

9. As rightly held in R.K. Sharma (supra), the aforesaid reasoning given in the case of Balbir Singh Turn (supra), in our opinion, has not been accepted by the three Judge Bench decision in the case of M.V. Mohanan Nair (supra), which in clear terms holds grant of financial upgradation under the MACP Scheme is not a matter of pay structure, but an incentive scheme brought into force to relieve stagnation which operates on its own terms. We may add that the pay scales are fixed and revised by the rules which are enacted in exercise of powers conferred by the proviso to Article 309 and clause (5) of Article 148 of the Constitution of India. Therefore, vide Notification dated 29th August 2008, the Central Civil Services (Revised Pay) Rules, 2008 were enacted vide G.S.R. No. 622(E). Rule 1(2) states that the Rules, as enacted, shall be deemed to have come into force on 1st January 2006. The aforesaid Rules neither postulate nor have any provision for grant of financial upgradation under the MACP Scheme. It is to be further noted, and it is an accepted position of both parties, that the MACP Scheme, as implemented, postulates grant of financial upgradation after 10, 20 and 30 years of regular service and not after 8, 16 or 24 years of regular service, as was originally envisaged in terms of Government Resolution dated 30th August 2008, or for that matter, 10 or 20 years of service, as was recommended by the Sixth Central Pay Commission. In our opinion, the Resolution of the Central Government dated 30th August 2008 cannot be read as conferring any right on the government employees. The resolution was not notified and enforced to confer a legal right.7 The Office Memorandum dated 19.05.2009 promulgates and operationalises the MACP Scheme with effect from 01.09.2008. The Office Memorandum states that

financial upgradations as per the provisions of the earlier ACP Scheme would be granted till 30.08.2008. Further, past cases would not be re-opened and the difference in pay scales on account of grant of financial upgradation under the old ACP Scheme and the MACP Scheme shall not be construed as an anomaly.

10. Learned counsel for the government employees, inspite of being correct that M.V. Mohanan Nair (supra) does not refer to Balbir Singh Turn (supra) and does not overrule it specifically, misses the point that the entire ratio and reasoning given in M.V. Mohanan Nair (supra), as rightly observed in R.K. Sharma (supra), cannot be reconciled with the ratio in Balbir Singh Turn (supra). M.V. Mohanan Nair (supra) has examined the MACP Scheme in depth and detail to settle the controversy, inter alia holding that supersession of the ACP Scheme by the MACP Scheme is a matter of government policy, and that "after accepting the recommendation of the Sixth Central Pay Commission, the ACP Scheme was withdrawn and the same was superseded by the MACP Scheme with effect from 1.9.2008."8 The ACP Scheme and MACP Schemes were held to be in the nature of incentive schemes to relieve stagnation and not as a part of pay structure, which had revised the pay and the dearness allowance with effect from 1.1.2006. In these circumstances, we do not think a case for reference to a larger Bench of three Judges to reconsider the ratio in the decision of R.K. Sharma (supra) is made out. Therefore, we reject the contention of the learned counsel for the respondents/government employees for reference of the matter.

11. On the third aspect, we should record the concession rightly made by the Additional Solicitor General during the course of the hearing that the personnel working in the Central Armed Forces would be granted financial benefit under the MACP Scheme on completion of prescribed years of regular service by relaxation in cases where, on account of administrative or other reasons, they could not be sent for participation in pre-promotional course. The appellant-Union of India has agreed to accept the directions given by the Delhi High Court in the case of Ram Avtar Sharma v. Director General of Border Security Force9 in this regard. A liberal, pragmatic and ameliorative approach is required to succour genuine grievances of the personnel doing duty for the nation, owing to which they forgo participation in pre-promotional courses. Accordingly, the third question is answered against the appellant-Union of India."

4. Thus as observed vide order dated 06.03.2025 of this Tribunal in OA 636/2017 in ***Ex Hav Braham Pal Singh vs. UOI & Ors.,*** the directions in ***Balbir Singh Turn***(supra) have been categorically taken into account by the Hon'ble Supreme Court vide judgment dated 22.08.2022 whereby categorically it has been observed vide Para-12 to the effect that the appeals filed by the UOI were partly allowed ***and impugned judgments to the extent that they intend that the MACP scheme applied with effect from 01.01.2006 and that under the MACP scheme, the employees are entitled to financial upgradation into next promotional post were set aside with it having been specifically directed that the MACP scheme is applicable with effect from 01.09.2008 and as per the MACP Scheme, the entitlement is to financial upgradation equivalent to the immediate next grade pay in the hierarchy of the pay bands as stated in Section 1, Part A of the First Schedule to the Central Civil Services(Revised Pay) Rules, 2008.***

5. In view thereof, the contentions raised on behalf of the applicant that the applicant would be entitled to the grant of MACP scheme with effect from 01.01.2006 cannot be granted, OA 1723/2019 is dismissed.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(RASIKA CHAUBE)
MEMBER (A)

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