

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

145.

OA 2695/2021 WITH MA 2842/2021

Smt Pinki Devi Wd/O

... Applicant

Late Nk Arendra Pratap Singh

Versus

Union of India & Ors.

... Respondents

For Applicant

:

Shri J P Sharma, Advocate

For Respondents

:

Shri Avdhesh Kumar Singh, Advocate

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON

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

O R D E R
06.09.2023

MA 2842/2021

Keeping in view the averments made in the application and in the light of the decision in Union of India and others Vs. Tarsem Singh (2009(1) AISLJ 371), the delay in filing the OA is condoned.

2. MA stands disposed of.

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3. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant filed this OA praying to quash the impugned letter no. PDC/MACP/2893623F dated 19.07.2021 and direct the respondents to grant 2nd MACP to the applicant (posthumously) with pay and allowances of the rank of Naib Subedar for life by condoning a shortfall of 108 days (108 days = 17+30+31+30 days).

4. Ld. Counsel for the applicant submits that the applicant was enrolled in the Army on 30.06.1997 for a contractual period of 17 years of colour and 02 years reserve service or till 42 years of age whichever is earlier. He was promoted to the rank of Naik with effect from 30.06.2009 and subsequently appointed as Lance Havildar w.e.f. from 01.03.2013. However, he suffered a Battle Casualty during the OP Rakshak in J&K and died on 13.03.2013, and that the 5th CPC recommended two upgradations of pay w.e.f. 1.1.1996 under Assured Career Progression (ACP) Scheme and 6th CPC recommended three upgradations of pay w.e.f. 1.1.2006 under Modified Assured Career Progression (MACP) Scheme but the benefits of the Scheme were not extended to him.

5. The Applicant contends that he is entitled for one upgradation of pay in the rank of Naik under MACP Scheme as he has completed 15 years, 08 months and 14 days of military service, but due to his unfortunate death, he could not complete 16 years service for the purpose of MACP, with shortfall of 3 months and 16 days to be condoned but the same was denied on the ground that the applicant is not eligible for MACP-II (Nk Grade) benefits due to non-qualifying mandatory length of 16 years service. Aggrieved by the aforesaid rejection, the Applicant has filed the present Original Application.

6. Per Contra, Ld. Counsel for the Respondents submit that that the husband of the Applicant died on 13.03.2013 during OP Rakshak and accordingly, his death was declared as 'Battle Casualty' after rendering 15 years, 08 months and 14 days of actual qualifying service and therefore, the service being less than 16 years, he is not entitled for MACP benefits and in absence of any provisions governing condonation of shortfall for grant of MACP under the policy in vogue, the applicant is not entitled for the same as well.

7. Before adjudicating the issue in question, it is pertinent to refer to the policy in place for the entitlements for MACP Benefits. We find that the criteria for grant of financial upgradations under MACP Scheme are given in Para 8 of Administrative Instructions issued vide IHQ of MoD (Army) letter No B/33513/ACP/AG/PS-2(c) dt 13.06.2011, which reads as under:-

"8 Financial Upgradation on ACP. There shall be three financial upgradations under the MACPS, counted from the direct entry grade on completion of 8, 16 and 24 years service respectively. Financial upgradation under the Scheme will be admissible whenever a person has spent 8 years continuously in the same grade pay. MACP will imply a minimum increase of 3% of total pay (including Grade Pay, 'X' Group Pay, where applicable) applicable to the rank in respect of which MACP is being granted."

8. We find that as per the initial orders of the MoD vide Letter No.14(1)99-D(AG) dated 30.5.2011, the MACP Scheme was to be

operational w.e.f. 01.09.2008. It was only consequent to the Hon'ble Supreme Court Judgement dated 08.12.2017 in the matte of *UoI vs Shri Balbir Singh Turn & Anr; Civil Appeal Diary No. 3744 of 2018* that the Govt. of India made the MACP Scheme operational w.e.f. 1.1.2006 vide MoD letter No.14(1)/99-D(AG) dated 25.7.2018.

9. On the careful perusal of the materials available on record and also the submissions made on behalf of the parties, we find that the instant case is a matter with the peculiar facts and circumstances. We observe that had the husband of the applicant not been martyred in the OPs, he would have completed 16 years of service, therefore, entitling him for grant of MACP. Recording aforesaid, we notionally extend the service of the applicant till the completion of 16 years of service, thereby, entitling the applicant for the grant of MACP.

10. Accordingly, we direct the Respondents to grant the benefits of 2nd MACP to the husband of the applicant, extending it to the applicant, within 4 months of the date of the pronouncement of this order, failing which the applicant shall be entitled to the interest of 6% from the date of expiry of 4 months till the date of actual payment.

11. Consequently, this OA 2695/2021 is allowed in view of peculiar facts and circumstances of this case.

12. No order as to costs.

13. Pending miscellaneous application, if any stands disposed of.

[RAJENDRA MENON]
CHAIRPERSON

[C.P. MOHANTY]
MEMBER (A)

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