

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

11.

OA 3427/2024 with MA 3709/2024

Sep Alok Kumar Biswal (Retd) Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Mr. Rajkumar, proxy for
Mr. Nawneet Krishna Mishra, Advocate
For Respondents : Mr. Arvind Patel, Advocate

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER
04.09.2024

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

“(a) direct the respondents to grant MACP-II to the applicant of the rank of Havildar w.e.f 26 Dec 2020 and revise his pension accordingly.

(b) direct the respondents to pay the due arrears of pay & pension with interest @12% p.a. to the applicant.

(c) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case.”

2. Along with the same is MA 3709/2024 filed on behalf of the applicant seeking condonation of 964 days is delay in filing the present OA for reasons mentioned therein. In the interest of justice, in view of the judgments of the Hon'ble Supreme Court in the matter of *UoI & Ors Vs Tarsem Singh* 2009(1) AISLJ 371 and in *Ex Sep Chain Singh Vs Union of India & Ors* (Civil Appeal

No. 30073/2017 and the reasons mentioned, the MA 3709/2024 is allowed and the delay of 964 days in filing the OA 3427/2024 is thus condoned. The MA is disposed of accordingly.

3. In view of the factum that as per the averments made in Para 4.2 of the OA 3427/2024, it has been stated by the applicant to the effect:-

“That the applicant had approached to the respondents for grant of MACP-II but was denied the same merely on the ground that he had given unwillingness certificate. It is pertinent to mention here that there are no enabling provision in the MACP which could disentitle the applicant as the applicant had already completed his terms of engagement. The only condition that was available to the applicant that if the applicant has no opportunity for promotion for want of vacancy in the next higher rank, the benefit of MACP could not be denied to him merely on the basis of unwillingness certificate given by the applicant,”

and in view of the order dated 30.05.2024 of the Larger Bench of the AFT (RB) Chandigarh at Chandi Mandir in OA 728/2020, whereby the said aspect has been decided with it having been held vide paragraphs 28, 29 and 30 thereof, to the effect:-

“28. In view of the above, the facts are clear that MACP Scheme was made effective w.e.f 01.09.2008 as per Government of India resolution and MACP not being part of pay and DA, the Government notified it on different dates for implementation and in the case of MACP scheme, it was decided to be given w.e.f. 01.09.2008. It was also made clear by Government of India, Ministry of Personnel, Public

Grievances and Pensions (Department of Personnel and Training) that Cadre Controlling Authority was to lay down guidelines and criteria for grant of financial up-gradation as per MACP Scheme. Further, it was clarified that passing of cadre test was an essential part for promotion and if any individual refused to undergo cadre test for promotion or unwillingness for promotion, he should not be entitled to MACP Scheme because MACP Scheme was for individuals who are victims of long stagnation in service and they were held entitled to financial up-gradation after a lapse of 8,16 and 24 years of service. Similarly, disciplinary proceedings were essential to be looked into while passing order for grant of promotion and if an individual is held not entitled to promotion because of disciplinary proceedings, he was refused financial up-gradation because of disciplinary proceedings against him as approved by Screening Committee duly notified as per Government of Indian policy.

29. In the light of the above, we decide the controversy that financial up-gradation is to be given after 8,16 and 24 years of service to break stagnation but if an individual gives unwillingness to undergo promotion cadre test or unwillingness for promotion or he is involved in any disciplinary proceedings or case involving inefficiency those are to be looked at separately by the competent authority and they were not entitled to financial up-gradation as per scheme of MACP.

30. Resultantly, the present reference is decided against the applicant to the extent that if financial up-gradation is to be given after 8,16 and 24 years to break stagnation but if an individual refuses promotion or to undergo promotion cadre test, his case shall not be considered as financial stagnation for grant of MACP purpose and his case is to be dealt with separately. Similarly, cases involving red ink entries and disciplinary proceedings are also looked into separately as per law/rules. Pending Miscellaneous Application (s), if any, shall also stand disposed of,"

coupled with the factum that even the aspect of the non-availability or the availability of the vacancy, position has been considered vide the concurring judgment of Hon'ble Mr. Justice Sudhir Mittal, Member (J) in the same verdict dated 30.05.2024, with observations therein in paragraph 8 thereof, to the effect:-

"8. Reliance upon the judgments of various Regional Benches is of no avail as the said judgments are per-incuriam as the same have been passed in ignorance of the terms of the scheme as accepted and implemented by the Government of India. Learned counsel for PBORs has made special reference to the judgment dated 31.01.2023 passed by the Regional Bench, Srinagar at Jammu in OA 31.01.2023 passed by the Regional Bench, Srinagar at Jammu in OA No. 13 of 2022 Ex. L/Naik Arjun Singh Vs. Union of India and Others, judgment dated 18.01.2019 passed by the Regional Bench, Jabalpur in OA 55 of 2018 Naik Raghuvveer Singh vs. Union of India and others and judgment dated 10.07.2017 passed by the Regional Bench, Chandigarh in OA No. 1228 of 2016 Rajesh Kumar Vs. Union of India and others. All these judgments proceed on the premise that refusal to undergo promotion cadre was not fatal because at that point in time, it was not certain whether a vacancy for promotion to the higher rank would be available. With due respect, it is observed that the said reasoning is patently flawed as nobody can say in advance whether a vacancy would be available in future because vacancies can arise not only due to retirements but due to other unforeseen situation also, such as death or disablement. Moreover, the requirement of MACP Scheme is of acceptance of offer of promotion. If an employee is in the line of promotion and is otherwise eligible, he must accept offer of future promotion, otherwise, it would adversely affect the efficiency of the service and the Scheme providing for financial up-gradation would run the risk of being declared illegal. Once the scheme itself

states that the refusal of promotion would be fatal, it has to be implemented accordingly. The said provision cannot be said to be illegal and cannot be ignored. Refusal to undergo a promotion cadre tantamount to refusal of promotion as promotion is available only to those who have qualified the promotion cadre,”

the matter be re-notified for consideration of the aspect of the maintainability or otherwise of the OA 3427/2024 and be re-notified with OA 3258/2024.

**(JUSTICE ANU MALHOTRA)
MEMBER (J)**

**(REAR ADMIRAL DHIREN VIG)
MEMBER (A)**

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