

**COURT NO. 2, ARMED FORCES TRIBUNAL**  
**PRINCIPAL BENCH, NEW DELHI**

**O.A. No. 1703 of 2019**

**In the matter of :**

**Hav M. Kumar**

**... Applicant**

**Versus**

**Union of India & Ors.**

**... Respondents**

**For Applicant : Shri Virender Singh Kadian, Advocate**

**For Respondents : Shri Arvind Patel, Advocate**

**CORAM:**

**HON'BLE Ms. JUSTICE ANU MALHOTRA, MEMBER (J)**

**HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)**

**ORDER**

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 (hereinafter referred to as 'AFT Act'), the applicant has filed this OA and the reliefs claimed in Para 8 read as under :

***“(a) Quash and set aside impugned contents of para 2(4) of letter No. B/12010/Stat/MK/MP(A)/EME Pers/MP-1 dated 16.04.2018 and impugned letter No. LG11/Observations Replies dated 29.03.2019. And/or***

- (b) *Direct Respondents to fix the pay of the applicant in the rank of Havildar w.e.f. 01.08.2010, at par with his batchmates and further grant pay and allowances of the 3<sup>rd</sup> MACP of the rank of Naib Subedar in Grade Pay Rs. 4200/- wef 01.08.2018. And/or*
- (c) *Direct Respondents pay the due arrears with interest @ 12% p.a.*
- (d) *Any other relief which the Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case."*

#### **BRIEF FACTS**

2. The applicant, who is a serving Havildar in the Indian Army, was enrolled on 16.03.2002. He was promoted to the rank of Naik on 12.09.2008 along with his batch-mates. In the year 2010, while he was posted to 58 Rashtriya Rifles (RAJPUT) by EME Records, although the applicant was detailed for Promotion Cadre Course Serial No. 36/2009-10 which was to be held from 22.02.2010 to 17.04.2010, but his Unit authorities did not spare him to attend the Promotion Cadre Course. The applicant could not attend the next promotion cadre course which was held from 05.07.2010 to

25.08.2010 for the same reason. Thereafter, the applicant was again detailed by EME Records for Promotion Cadre Course Serial No. 39/2011-2012 from 01.01.2012 to 25.02.2012 while he was posted to 616 AD Bde and the applicant successfully completed the promotion cadre course and qualified for the promotion to the rank of Hav. However, the applicant's batch-mates were promoted to the rank of Hav with effect from 01.08.2010 and the applicant lost his seniority from that date due to the fault on the part of the respondents and was promoted to the rank of Hav w.e.f. 16.04.2012 with ante-date seniority w.e.f. 25.02.2012. Aggrieved by the same, the applicant submitted a Statutory Complaint dated 05.01.2017 seeking restoration of his seniority and pay and allowances of the rank of Hav w.e.f. 01.08.2010. Vide letter dated 16.04.2018, the Chief of Army Staff allowed the grant of ante-date seniority in the rank of Hav along with his batch-mates i.e. 01.08.2010 with other consequential benefits but without any effect on pay and allowances, which according to the applicant, is unjustified and arbitrary as he could not get promotion to the rank of Hav from 01.08.2010 due to the fact that he was not spared

by his unit authorities to attend the promotion cadre course.

3. It is the case of the applicant that as per the seniority to be reckoned from 01.08.2010, he became eligible for grant of 3<sup>rd</sup> MACP of the pay of the next higher rank of Nb Sub in the Grade Pay of Rs.4,200/- w.e.f. 01.08.2018 on completion of 8 years of service in the rank of Hav and he thus submitted an application dated 28.09.2018 for grant of 3<sup>rd</sup> MACP w.e.f. 01.08.2018. The Chief of Army Staff, after examining the statutory complaint, directed that redress be granted by way of granting ante date seniority in the rank of Hav along with his batch-mates, with other consequential benefits as per extant policy without any effect on pay and allowances. Consequent upon this, a Part II order No. 1/1605/0001/2018 dated 01.05.2018 granting ante-date seniority to the applicant w.e.f. 01.08.2010. Thereafter, the applicant submitted a petition dated 27.09.2018 for grant of MACP-III (Nb Sub Grade). Accordingly, a Part II order No. 1/3721/0013/2018 dated 15.10.2018 was published granting 3<sup>rd</sup> MACP to the applicant w.e.f. 01.08.2018, however, the same was rejected by the PAO (OR) EME. When the applicant represented for case of Observation on

monthly pay-slip of November, 2018 with regard to Part II order of 3<sup>rd</sup> MACP, the respondents issued letter No. LG11/Observations Replies dated 29.03.2019, impugned herein, stating that as the PBOR i.e. the applicant, has not completed the requisite years of service, he is not entitled to the 3<sup>rd</sup> MACP w.e.f. 01.08.2018 and thus the Part II order dated 15.10.2018 was rejected. Aggrieved by the same, the applicant has filed the instant OA for the said relief. In the interest of justice, in terms of Section 21(1) of the AFT Act, 2007, we take up the same for consideration.

### **CONTENTIONS OF THE PARTIES**

4. The learned counsel for the applicant submitted that the respondents committed an error in not fixing the pay of applicant at par with his batch-mates having the same seniority i.e. 01.08.2010 despite the fact that the applicant was not granted promotion to the rank of Hav from the date of his seniority i.e. 01.08.2010 due to the fault on their part as during the promotion cadre courses of the relevant period, the applicant was not spared by his unit authorities and his batch-mates were granted promotion w.e.f. 01.08.2010. The learned counsel submitted that the respondents have acted

arbitrarily, unfairly and unjustifiably and in violation of principles of equity under Articles of 14 and 16 of the Constitution of India. It was further submitted on behalf of the applicant that although Chief of Army Staff granted the relief of ante-date seniority to the applicant w.e.f. 01.08.2010, however, barring revision of his pay and allowances is arbitrary as the applicant could not get the promotion w.e.f. 01.08.2010 because of no fault of his and in fact he was deprived of the said benefit due to the fact that he was not spared by his unit authorities to attend the promotion cadre course at that time; and consequently the applicant lost his seniority and later the respondents have arbitrarily not revised his pay w.e.f. 01.08.2010 in the rank of Hav on the ground that the applicant physically assumed the charge w.e.f. 16.04.2012; the respondents acted arbitrarily and illegally and cancelled the order of grant of 3<sup>rd</sup> MACP on the ground that the applicant has not completed 8 years of service in the rank of Hav and thus he is not entitled to the 3<sup>rd</sup> MACP w.e.f. 01.08.2018. The learned counsel submitted that the respondents have acted arbitrarily, discriminately and unreasonably in the matter. Reliance was

placed on behalf of the applicant on the order of this Tribunal passed on 05.04.2018 in the case of **Hav Clk (SD) Shyam Singh Vs. Union of India & Ors. [O.A. No. 114 of 2016]**, wherein the Tribunal granted the applicant therein promotion with ante date seniority along with his batch-mates without any direction regarding revision of pay and allowances. The learned counsel for the applicant submitted that in the present case, the applicant lost his seniority due to the fault on the part of the respondents and thus he may be granted pay-fixation in the rank of Hav w.e.f. 01.08.2010 and accordingly from 01.08.2018, the applicant is entitled to get 3<sup>rd</sup> MACP and pay revision in the higher rank of Nb Sub of Rs.4,200/-.

5. *Per contra*, the learned counsel for the respondents controverted the submissions made on behalf of the applicant and submitted that the applicant was detailed for promotion cadre course from Nk to Hav by EME Records twice in the year 2010, but the applicant was not deputed for the above cadre course and, therefore, the applicant was superseded for promotion to the rank of Hav w.e.f. 01.08.2010 due to lack of CCNH vide EME Records letter No.

1380/CA1/P2/TB/39 dated 31.05.2010; and thereafter when the applicant was detailed and successfully completed the promotion cadre course from 02.07.2012 to 25.02.2012, he was promoted to the rank of Hav w.e.f. 16.04.2012 with ante-date seniority w.e.f. 25.02.2012 and hence, the respondents were justified in their action. The learned counsel further submitted that the Chief of Army Staff considered the statutory complaint filed by the applicant and granted the relief of ante-date seniority in the rank of Hav to the applicant along with his batch-mates with other consequential benefits, however, without any effect on pay and allowances; and accordingly the applicant was granted ante-date seniority w.e.f. 01.08.2010. The learned counsel for the respondents further submitted that when the applicant submitted a petition dated 27.09.2018 for grant of 3<sup>rd</sup> MACP in the next higher rank of Nb Sub, a Part II order dated 15.10.2018 granting him the 3<sup>rd</sup> MACP w.e.f. 01.08.2018 was issued, however, as per the MACP Scheme, armed forces personnel are entitled to three financial upgradations at intervals of 8, 16 and 24 years of continuous regular service and hence as the applicant assumed charge

physically in the rank of Hav w.e.f 16.04.2012 and thus had not spent 8 years regular service in the rank of Hav, he is not entitled to the 3<sup>rd</sup> MACP and consequently the Part II order granting 3<sup>rd</sup> MACP was cancelled. The learned counsel for the respondents thus prayed that the OA may be dismissed.

### **ANALYSIS**

6. We have heard the learned counsel for the parties and have perused the records produced before us.

7. In the instant case, it is not in dispute that the applicant was enrolled in the Indian Army on 16.03.2002 and he was promoted to the rank of Naik w.e.f. 12.09.2008 along with his batch-mates. It is also not disputed that when the applicant was detailed twice for promotion cadre to be held from 22.02.2010 to 17.04.2010 and 05.07.2010 to 28.08.2010, he was not spared by his unit authorities to attend the promotion cadre course and although the applicant had not submitted any unwillingness certificate for promotion but he did not get any promotion. However, the applicant's batch-mates were promoted w.e.f. 01.08.2010. It is again not in dispute that later when the applicant was posted to 616 AD Bde, he was again detailed for promotion

cadre course held from 02.01.2012 to 25.02.2012, which he successfully completed and consequently, was promoted to the rank of Hav and assumed the charge of the rank of Hav w.e.f. 16.04.2012 with ante-date seniority w.e.f. 25.02.2012.

8. It is also a fact that while disposing of the statutory complaint of the applicant, the Chief of Army Staff directed for grant of ante-date seniority to the applicant w.e.f. 01.08.2010 with all consequential benefits, however, it was also directed that the consequential benefits would be '*without any effect on pay and allowances*'. The applicant later submitted an application for grant of 3<sup>rd</sup> MACP of the rank of next higher grade of Nb Sub of Rs. 4,200/- w.e.f. 01.08.2018, towards which a Part II order was also published for grant of 3<sup>rd</sup> MACP to the applicant w.e.f. 01.08.2018. However, the same was cancelled later on the ground that the applicant had not completed 08 years' regular service in the rank of Hav on 01.08.2018, hence he is not entitled to the said relief.

9. Primarily, the Government has introduced the MACP Scheme as a welfare scheme because it provides for three financial upgradations at 8, 16 and 24 years of continuous

service. This Scheme provides hope for those employees who, for various reasons, are unable to get promoted. In the case at hand, the objection of the respondents is that on the due date when the applicant would have been considered as eligible for grant of financial upgradation as per MACP Scheme, he had not completed physically 08 years of service in the rank of Hav and, therefore, the applicant cannot seek the benefit of MACP Scheme as sought for.

10. We find that in the present case, the applicant lost his seniority due to the fault of the respondents as his unit authorities had not spared him for attending the promotion cadre course. Had he been allowed to attend the promotion cadre course held from 22.02.2010 to 17.04.2010 or the next promotion cadre course again from 05.07.2010 to 28.08.2010, there would have been chances of the applicant being successful in completing the same on due date with his batch-mates and he would have got the promotion as due along with his batch-mates. The Chief of Army Staff, therefore, after examining his case, granted the applicant ante-date seniority with effect from 01.08.2010 and that probably would help the applicant at the time of next

promotion, if any. However, as far as eligibility for grant of the benefit of MACP scheme i.e. 3<sup>rd</sup> MACP is concerned, the criteria for grant of financial upgradations under MACP Scheme are given in Para 8 of the Administrative Instructions issued vide IHQ of MoD (Army) letter No. B/33513/ACP/AG/PS-2(c) dated 13.06.2011, which reads as under:-

**"8. There shall be three financial upgradations under the MACPS, counted from the direct entry grade on completion of 8, 16 and 24 years service. Financial upgradation under the scheme will be admissible whenever a person has spent 8 years continuously in the same grade pay.....".**

11. Further, the details of the promotions obtained by the applicant are given as under :

Applicant : Hav M. Kumar			
1.	Date of Enrolment	:	16.03.2002
2.	Date of Promotion in the rank of Naik	:	12.09.2008
3.	Date of assumption the rank of Hav	:	16.04.2012 with ante date seniority w.e.f. 25.02.2012
4.	While disposing of the statutory complaint filed by the applicant, the Chief of Army Staff allowed the grant of ante-date seniority to the applicant w.e.f. 01.08.2010 with consequential benefits but 'without any effect on pay and allowances'.		

12. From the above details, it is evident that so far as grant of 3<sup>rd</sup> MACP to the applicant is concerned, Para 8 of the

MACP Policy letter as mentioned above provides for the financial upgradations under the scheme will be admissible whenever a person has spent 8 years continuously in the same grade pay, meaning thereby a person would become entitled to the MACP when he completes 8 years of regular service in the same rank so as to remove the stagnation in a rank. In the instant case, as is evident that the applicant assumed the rank of Hav physically on 16.04.2012 and accordingly he would become eligible for the 3<sup>rd</sup> MACP on completion of 8 years of regular/continuous service from that date which comes to 16.04.2020. Hence, in our considered view, the applicant is not entitled to the grant of 3<sup>rd</sup> MACP on 01.08.2018 as he has assumed the rank of Hav physically on 16.04.2012 and, therefore, he would complete the 8 years' continuous service only on 16.04.2020, if not promoted to the rank of Nb Sub by that date. The grant of ante-date seniority will only help the applicant for the purpose of considering his seniority for promotion to the next rank, if any.

13. A Part II order was also published for grant of 3<sup>rd</sup> MACP but later, the PAO (OR) had rejected the case of the applicant

with regard to the grant of 3<sup>rd</sup> MACP on the ground that the applicant was not holding the rank of Hav w.e.f. 01.08.2010 and he had not completed 8 years of regular/continuous service in that rank on 01.08.2018. We do not find any infirmity in the action of the respondents on the issue of non-grant of MACP to the applicant as observed by us in Para 12 above.

14. As regards the prayer of the applicant qua fixation of pay and allowances w.e.f. 01.08.2010 in the rank of Hav, in our view, as per the extant policies, as the applicant has physically assumed the charge in the rank of Hav w.e.f. 16.04.2012, he is not entitled to the revision of pay and allowance w.e.f. 01.08.2010. In this regard, we may refer to an order of the Coordinate Bench of this Tribunal dated 23.02.2023 in the case of **Sub D Subramani Vs. Union of India & Ors. etc. [MA 2376/2022 in OA 808/2019 etc.]**, whereby the Tribunal recalled the order passed earlier in the OA which was allowed and the claimant was granted pay fixation from the date of ante-date seniority. Relevant part of that order dated 23.03.2023 is reproduced as under :

**"13. .... However, the fact that the order granted the option of the most beneficial option for fixing the respondent's (applicant in OA) pay**

*from the ante date seniority of 01.10.2008 (or even if it was 01.08.2008) is patently an error on the face of the record since the respondent (applicant in OA) was not entitled to this since the pay and allowances on promotion are to be fixed only from the date of physical assumption and not from the ante date seniority .....*"

Therefore, the pay and allowances have rightly been fixed by the respondents from the date of the applicant's physical assumption of the rank of Hav i.e. 16.04.2012 and not from the date when ante-date seniority was granted to him i.e. 01.08.2010.

### **CONCLUSION**

15. In view of the above, there being no merit in the case, the O.A. No. 1703 of 2019 is dismissed.

16. There shall be no order as to costs.

Pronounced in open Court on this 26 day of April, 2024.

[REAR ADMIRAL DEHREN VIG]  
MEMBER (A)

[JUSTICE ANU MALHOTRA]  
MEMBER (J)

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