COURT No.3
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA 505/2018
With
MA 2680/2019

Smt. Chaina Das W/o
Ex Hav Shiba Prasad Das ... Applicant
VERSUS
Union of India and Ors. .... Respondents

For Applicant : Mr. U.S. Maurya, Advocate
For Respondents : Mr. Prabodh Kumar, Sr. CGSC

CORAM

HON'BLE MS. JUSTICE NANDITA DUBEY, MEMBER (J)
HON'BLE MS. RASIKA CHAUBE, MEMBER (A)

ORDER

MA 2680/2019

This is an application filed on behalf of respondents to seeking condonation of delay in filing reply affidavit. For the averments made in the application, the delay in filing the reply affidavit is condoned and the documents are taken on the record. MA stands disposed off.

OA 505/2018

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant vide the present OA makes the following prayers:-

*"(a) To direct the respondents to grant 3rd ACP of the Grade Pay of Rs. 4200 instead of Rs. 2800 wef 01.01.2006 pursuant to Govt. approval 6th CPC report under the MACPS as admissible to the petitioner wef 01.01.2006 i.e. date implementation of 6th CPC report, for having completed more than 24 years of continuous service in army.*

*(b) Quash and set aside the impugned orders dated 15.12.2017, 23.12.2010 and 30.06.2009 and grant Special Family Pension wef 28.11.2007 (Next date of the death of applicant husband).*

*(c) To pass such further order or orders/Directions as this Hon'ble Tribunal may deem fit and proper in accordance with law."*

**BRIEF FACTS**

2. The Late Ex Hav Shiba Prasad Das was enrolled in the Indian Army (Corps of EME) on 02 Feb 1983. He died on 27 Nov 2007 due to "***INTRAVASCULAR COAGULATION***" and the death of the individual was considered as neither attributable to nor aggravated by military service by the medical authority as per AFMSF-93 (Pt-II) (version 2002) dated 06 May 2008 issued by Base Hospital, Delhi Cantt.

3. After his death, his widow (applicant herein) was granted Ordinary Family pension vide PPO No. F/NA/014713/2018 dated 03.10.2008 and F/NA/CORR/011217/2010 dated 21.05.2010, against which she preferred an appeal for grant of Special family pension, which was rejected vide letter dated 30.06.2009.

## CONTENTIONS OF THE PARTIES

5. The learned counsel for the applicant placed reliance on the verdicts of the Hon'ble Supreme Court in the case of ***Union of India & Ors. Vs. Balbir Singh Turn & Anr. [(2018) 11 SCC 99]***, to submit that the grant of the MACP benefits apply w.e.f. 01.01.2006 and further submitted to the effect that as the applicant died on 27 Nov. 2007, he is eligible for grant of MACP-III (Nb Sub rank).

6. Inter alia, on behalf of the respondents, reliance has been placed on the verdict dated 22.08.2022 of the Hon'ble Supreme Court in ***UOI& Ors. Ex HC/GD Virender Singh*** [2022 LiveLaw (SC) 699] to submit to the effect that it has been categorically observed vide Para-12 thereof to the effect:-

> ***"12. 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."***

to submit that the effect that the MACP is applicable only with effect from 01.09.2008.

7. Learned counsel for the applicant has submitted to the effect that there has been no categorical reversal of the verdict of the Hon'ble Supreme Court in ***Balbir Singh Turn*** (supra) and that the grant of the MACP benefits have thus to apply with effect from 01.01.2006.

8. With respect to the grant of Special Family pension, the learned counsel of the respondents submitted that the death of the applicant's spouse was considered as neither attributable to nor aggravated by military service by the Competent Authority for the reason that the circumstances leading to his death were not related to military duties, hence the applicant was not found entitled to Special Family Pension in terms of Regulations 213 of the Pension Regulations for the Army 1961 (Part-I). The facts regarding rejection of Special Family Pension claim were communicated to the applicant vide EME Records letter No 14551595A/FP-8/Pen dt 09 Jun 2008. with an advise to prefer an appeal within six months of the receipt of the rejection letter. The first appeal for grant of Special family pension was rejected vide letter dated 30.06.2009.

## ANALYSIS

9. On the careful perusal of the materials available on record and also the submissions made on behalf of the parties, we are of the opinion that it is essential to advert in relation thereto to the said observations of the Hon'ble Supreme Court in Paras-8 to 11 in ***UOI& Ors. vs. Ex HC/GD Virender Singh*** reported in 2022 LiveLaw (SC) 699, which 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:*
>
> > *"(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;"*
>
> *It also refers to clause (ix) of the Resolution which reads as follows:*
>
> > *"(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."*

10. It is clear from the perusal of the aforesaid judgement that 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 are 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.

11. The Similar view has been taken by this tribunal in ***Ex Hav. Brahmapal Singh Vs. Union Of India and ors.*** **(OA-636/2017),** wherein the similar position as laid down in ***HC/GD Virender Singh (supra)*** has been followed, and thus, in view of the settled position of

law 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 accepted. The fact that the applicant passed away on 27 Nov, 2007, therefore, the prayer of the applicant with respect to grant of MACP is thus rejected. Also, the applicant had got two promotions i.e.

(a) Substantive Naik - 03.02.1999.

(b) Substantive Hav - 09.09.2003 with ante dt seniority 01.05.2003.

Hence, applicant is not due for MACP w.e.f. on 01/01/2006 as only three years have lapsed before his last promotion.

12. Moving on to second issue of grant of Special Family Pension, we note that the death of the individual due to "**INTRAVASCULAR COAGULATION**" and was considered as neither attributable to nor aggravated by military service by the medical authority as per AFMSF-93 (Pt-II) (version 2002) dated 06 May 2008 issued by Base Hospital, Delhi Cantt.

13. It has been clearly stated by the medical authorities that the applicant's spouse died due to Carcinoma Stomach (Optd) with disseminated intravascular coagulation. Therefore, his death in such circumstances is not any way related to duties of military service and is not attributable to military service.

14. At this moment, we find it pertinent to refer to Para 213 of the Pension Regulations of the Army, 1961(Part-I), reproduced as under:

> ***A special family pension may be granted to the family of an individual if his death was due to or hastened by—***
> ***(a) a wound, injury or disease which was attributable to military service, or***
> ***(b) the aggravation by military service of a wound, injury or disease which existed before or arose during military service.***

15. From the perusal of the aforesaid Para 213, we observe that the Special Family Pension can only be granted wherein either the cause or disability leading to death of the individual is attributable by military service or aggravated by military service, wherein we find that in the instant case, the circumstances leading to the death of the individual are not related to his military duties.

16. On a perusal of medical records, we find that Disseminated Intravascular Coagulation (DIC) is not a primary illness but a secondary pathological syndrome that complicates a variety of severe underlying medical conditions. It is characterized by the systemic activation of the body's coagulation cascade, leading to the widespread formation of microthrombi (small blood clots) in the circulation. This process consumes platelets and clotting factors, leading to a paradoxical state of both thrombosis and a high risk of life-threatening hemorrhage. A thorough review of hematological literature and clinical evidence confirms that military service, in and of itself, is not a recognized

independent risk factor or direct cause for the development of Intravascular Coagulation. The onset of Intravascular Coagulation is invariably linked to a specific, acute, and severe underlying medical event.

17. It is settled law that the opinion of Medical Board containing a panel of expert Doctors should be given primacy and credence, and that the opinion of the Medical Board cannot be overruled ordinarily unless there is enough contradictory evidence on the record, which in the instant case is absent.

18. In view of the aforesaid analysis, we are of the considered opinion that the applicant being unable to satisfy the conditions laid down in regulation 213 of the Pension Regulations of the Army 1961(Part-I), is not entitled for Special Family pension.

19. Hence, the instant OA 505/2018 is dismissed.

20. Pending miscellaneous application(s), if any are disposed off.

Pronounced on this 14th day of October, 2025.

**JUSTICE NANDITA DUBEY**
**MEMBER (J)**

**RASIKA CHAUBE**
**MEMBER (A)**