

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

OA 1022/2018

Ex HAV Naresh Kumar

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Mr. Pankaj Mehta, Ms. Shweta Soni,
Mr. R K Mehta and Mr. Parmod
Kalirana, Advocates (names mentioned in
view of Vakalatnama on record)

For Respondents : Mr. V Pattabhi Ram, Advocate with
Mr. Sanjay Pal, Advocate.

CORAM :

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

ORDER

OA 1022/2018

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

*“(a) Direct the respondents to grant the benefits of third
MACP as per the MACP Scheme dated 30.05.2011 to the
applicant w.e.f. 28.08.2006 i.e. on completion of 24 years
of regular service and release all the pay and pension,
retiral benefits and arrears of pension to the Applicant
alongwith the arrears and 18% interest thereupon;*

(b) Any other relief as this Hon'ble Tribunal may deem appropriate, just and proper in the interest of justice and in the facts and circumstances of the case may also be granted to the applicant."

2. The matter was fixed for hearing on 27.01.2025 when there was no representation on behalf of the applicant. On the said date counsel for the respondents sought time to put forth a judgment of the Hon'ble Supreme Court in support of their contentions.
3. Vide order 27.01.2025, Court notice was directed to be issued to the counsel for the applicant for the date of hearing that is 04.04.2025 which Court notice was served on the counsel for the applicant Mr. Pankaj Mehta on the date 11.02.2025 as per the postal tracking details on the record. None chose to appear on behalf of the applicant despite service of the said Court notice and the matter was thus "reserved for orders" vide order dated 04.04.2025.
4. The applicant in the instant case was enrolled in the Indian Army (Corps of EME) on 28.08.1982 and was discharged from service with effect from 31.08.2008 (AN) on completion of terms of engagement under Army Rule 13(3) (iii) (i).
5. The facts brought forth through the counter affidavit dated 22.03.2019 of the respondents are to the effect that whilst in service the applicant was promoted to the following ranks :-

“

S. No.	Rank Particulars	Period from-to
(a)	Naik	01 Apr 1995
(b)	Paid Acting Hav	20 Dec 1996 with ante date seniority wef 01 Nov 1996.
(c)	Substantive Hav	01 Feb 1998

”

6. The respondents further submit that pursuant to discharge, the applicant was paid service pension, death-cum-retirement gratuity, commutation and AGI maturity benefits.
7. The applicant had been promoted to the rank of Nk and Hav on 01.04.1995 and 01.02.1998 respectively. The Assured Career Progression Scheme for the Armed Forces personnel was introduced vide letter no. B/33513/ACP/AG/PS-2(c) dated 29.09.2003 with effect from 07.08.2003 granting two financial upgradations to other ranks of the Armed Forces on completion of 10 and 20 years of service in the scale of Naik or equivalent and Hav or equivalent respectively i.e qua those who were not promoted in regular service.
8. The applicant through the OA has submitted to the effect that he had rendered service for a period of 26 years and 4 days having retired from the Indian Army on 31.08.2008 and vide the Central Government resolution accepting the recommendations of the 6th Scale Pay Commission with regard to personnel below officer rank

(PBOR), the revised pay structure of pay bands and grade pay as well as pension with effect from 01.01.2006 and revised rates of allowances except DA with effect from 01.09.2008 were clarified. The applicant further submits that the Government had decided to grant 3rd MACP upgradations after 8, 16 and 24 years of service to the PBORs. The applicant also submits that this new Scheme was made applicable from 01.01.2008 and the Government of India issued a letter no. 14(1)/99-D (AG) resolving to implement the Modified Assured Career Progression (MACP) Scheme with effect from 01.09.2008 and consequently the applicant was not granted the benefits of 3rd MACP, in as much as, he had retired prior to 01.09.2008. The applicant further submits that he has been discriminated with those of his rank and those who retired after 01.09.2008.

9. The applicant has placed reliance on the verdict of the Hon'ble Supreme Court in *Union of India & Ors. vs. Balbir Singh Turn & Anr.* Civil Appeal Diary No. 3744/2016 to submit to the effect that it had been directed thereby that the MACP benefits be provided with effect from 01.01.2006.

10. The respondents through the counter affidavit dated 22.03.2019 have submitted to the effect that in as much as the benefits of the

MACP Scheme were effective with effect from 01.09.2008 as per Integrated Headquarters of Ministry of Defence (Army) letter no. B/33513/ACP/AG/PS-2(c) dated 13.06.2011 and as the applicant was discharged from service with effect from 31.08.2008 (AN) that is prior to 01.09.2008, he is not entitled to the grant of the MACP Scheme until the policy is amended qua the same.

11. During the course of the submissions made on 04.04.2025, the respondents have placed reliance on the verdict of the Hon'ble Supreme Court in *UOI & Ors. vs. Ex HC/GD Virender Singh* dated 22.08.2002 reported in 2022 Live Law (SC) 699 to submit to the effect that it has been categorically observed 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 to the effect that the MACP Scheme is applicable only with effect from 01.09.2008 and that the applicant is not entitled to the grant of the 3rd MACP benefits.

12. It is essential to advert to the order dated 06.03.2025 of this Tribunal in OA 636/2017 before the Armed Forces Tribunal, Principal Bench, New Delhi in the case of *Ex Hav Brahampal Singh vs. UOI & Ors.* wherein the identical issue of reliance on the verdict of the Hon'ble Supreme Court in *Balbir Singh Turn & Anr. (Supra)* by the applicant and on *UOI & Ors. vs. Ex HC/GD Virender Singh* relied upon on behalf of the Union of India were expressly considered vide Para 3 and it was observed therein to the effect :-

“3. 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.”

3. Thus, 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. 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. The prayer(a) of the applicant is thus rejected."

13. Thus, in view of the verdict of the Hon'ble Supreme Court in ***UOI & Ors. vs. Ex HC/GD Virender Singh (Supra)***, as adhered to by this Tribunal in ***Ex Hav Brahampal Singh (Supra)***, the applicant who had retired on 31.08.2008 is not entitled to the grant of the MACP Scheme which has been directed to take force with effect from 01.09.2008 as observed therein by the Hon'ble Supreme Court.

14. The OA is thus dismissed.

Pronounced in the Open Court on the ^{21st} day of April, 2025.


[MS. RASIKA CHAUBE]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

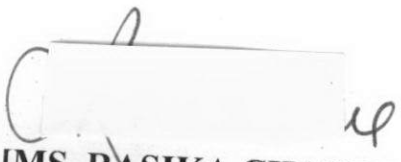
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Scheme, the entitlement is to financial upgradation equivalent to the immediate next grade pay in the hierarchy of the pay bands as stated in Section 1, Part A of the First Schedule to the Central Civil Services (Revised Pay) Rules, 2008. In view thereof, 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. The prayer(a) of the applicant is thus rejected."

13. Thus, in view of the verdict of the Hon'ble Supreme Court in *UOI & Ors. vs. Ex HC/GD Virender Singh (Supra)*, as adhered to by this Tribunal in *Ex Hav Brahampal Singh (Supra)*, the applicant who had retired on 31.08.2008 is not entitled to the grant of the MACP Scheme which has been directed to take force with effect from 01.09.2008 as observed therein by the Hon'ble Supreme Court.

14. The OA is thus dismissed.

Pronounced in the Open Court on the 21st day of April, 2025.


[MS. RASIKA CHAUBE]
MEMBER (A)


[JUSTICE ANU MALHOTRA]
MEMBER (J)

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