

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

OA 1571/2017

**Ex Hav Naba Kumar Hati
VERSUS
Union of India and Ors.**

..... Applicant

..... Respondents

For Applicant : Mr. Sukhbir Singh, proxy for
Mr. V.S. Kadian, Advocate
For Respondents : Gp Capt Karan Singh Bhati, Sr. CGSC

CORAM

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

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

- “(a) Quash and set aside the reply provided vide letter No. 2708/RTI Cell dated 03.06.2017. And/or
(b) Direct respondents to grant benefit of 3rd Modified Assured Career Progression scheme to the applicant by fixing his pay in the Grade pay of Rs. 4200/- i.e. of the rank of Naib Subedar along with other consequential and retiral benefits.
(c) Direct respondents to pay due arrears with interest @12% per annum from the date of authorization of MACP till final payment to the applicant.*

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

2. The applicant was enrolled in the Indian Army on 01.08.1986 and was discharged from the service on 31.07.2010 after completion of 24 years of service under Army Rule 13(3) III(i). The Ministry of Defence as per letter no. 14(1)/99-D(AG) dated 30.05.2011 had accepted the recommendations of the Sixth Central Pay Commission and introduced the MACP scheme accepting the grant of three financial upgradations thereunder at intervals of 08,16 and 24 years of continuous regular service. Vide letter no. B/33513/ACP/AG/PS-2(C) dated 13.06.2011 of the MoD(Army), the same was made applicable w.e.f. 01.09.2008. The applicant has submitted that he was required to be granted 3rd MACP for grade pay of Rs. 4200/- i.e. equal to the rank of Naib Subedar and he made a representation dated 19.05.2017 for the grant of grade pay of Rs. 4200/- for the rank of Naib. Subedar w.e.f. 01.08.2010 and to consider his pension and pensionary benefits for the rank of Naib Subedar

with all consequential benefits. However, vide the impugned letter dated 03.06.2017 the applicant was informed that as per the Para 25 of Administration Instructions Serial No. 16, the individuals who are enrolled on the 1st day of the month and retire on last days of the previous months are not entitled to ACP/MACP and thus the MACP-III was not applicable to him.

CONTENTIONS RAISED

3. The applicant has submitted that the non-grant of the 3rd MACP in the rank of Naib Subedar in the grade pay of Rs. 4200/- on completion of 24 years of service is wholly arbitrary, discriminatory and unconstitutional. *Inter alia*, the applicant submits that as per the Ministry of Defence letter dated 30.05.2011 and IHQ of Ministry of Defence(Army) dated 30.06.2011, the grant of the MACP is a beneficial policy and it is nowhere mentioned that immediately after discharge from service on completion of 24 years of service, a person becomes ineligible for grant of MACP benefits. Reliance has thus placed been on behalf of the applicant on the order



dated 07.08.2014 of this Tribunal in **Ex Hav Daya Ram vs. UOI & Ors.** in OA 60/2014 as also on the order dated 08.05.2015 in **Ex Dfr Pawan Kumar vs. UOI & Ors.** in OA 677/2014.

4. The respondents through their counter affidavit have refuted the claims of the applicant and reiterated that as per para-25 of the Admn instructions Ser. No. 26 states that the individuals who are enrolled on the 1st day of the month and retire on last day of the previous months are not entitled to the 3rd MACP and as the applicant was enrolled on 01.08.1986 and discharged from service on 31.07.2010, he is not entitled for third financial upgradation under the benefits of the MACP Scheme. The respondents have not refuted that the issue involved in the present matter has been adjudicated vide orders dated 07.08.2014 in **Ex Hav Daya Ram vs. UOI & Ors.** in OA 60/2014 and as also vide order dated 08.05.2015 in **Ex Dfr Pawan Kumar vs. UOI & Ors.** in OA 677/2014.

ANALYSIS

5. Vide order dated 07.08.2014 in OA 60/2014 in **Ex Hav Daya Ram**(Supra), it has been observed vide Para-4 thereof to the effect:-

“4. There is absolutely no dispute that after completion of 24 years of service, a man would be entitled to 3rd upgradation. However, the contention of the respondents is that mere completion of 24 years by in itself would not be a ground for upgradation unless he completes 8 years of services in the said grade. It may be worthwhile to note that in the appendix attached to the administrative instructions issued by the respondents on 13.06.2011, at para 23, it is clearly visible that while seeking 3rd upgradation it is necessary that a person who has completed 24 years of service or 8 years in the same grade pay whichever is earlier, will be entitled to upgradation. Therefore, the contention of serving in that very particular grade for not less than 8 years would not in itself be a ground to reject the prayer of the petitioner for grant of 3rd upgradation. As a matter of fact the respondents have consistently followed this policy while granting it in favour of Hav Daya Nand, Brijesh Kumar and Pyare Lal. It may be noted that Dayanand was promoted on 22.11.2004 and retired on 30.11.2009, Brijesh Kumar promoted on January,2007 and retired on 31.01.2009 and Pyare Lal was promoted in October,2005 and

retired on 31.03.2011. Admittedly these persons did not have requisite 8 years of service in that particular grade pay. The fact remains that they have been given 3rd upgradation by relying on the said policy. We are also constrained to accept the arguments of the petitioner that he is entitled to 3rd upgradation, even though he had not completed requisite 8 years of service in that grade. Lastly, it is stated that the petitioner does not have 24 years of service. The petitioner was appointed on 31.08.1985 and he retired on 31.08.2009. This is clearly reflected in his discharge certificate issued by the respondents which clearly shows that the petitioner has completed 24 years and one day service. It may be relevant to indicate that a Hav superannuates on completion of 24 years of service. It is not in dispute that the petitioner was not discharged from service before completion of 24 years of service. This by in itself goes to show that it is only after completion of 24 years, the petitioner has superannuated. Therefore, there is no dispute on the question as stated by the respondents that he has not completed 24 years of service. Learned counsel for the respondents also brought to the notice that at para 26 of the appendix, it is mentioned that if the individual is borne on the last day of the month, he will retire on the same day. If a Hav retires after 24 years, he will be entitled to grant of MACP. The expression completion of 24 years would entitle a person to be granted of 3rd upgradation.

The expression used that Hav who retires after 24 years is not entitled is not logical and contrary to the condition set out in the policy. The policy clearly sets out that it is only after 24 years, a man would be entitled to 3rd upgradation. Therefore, it cannot be said that on completion of 24 years a person will not be eligible for grant of MACP. This argument cannot be accepted and defies the logic as well as the fact. As already stated in supra that there is no dispute to this proposition that the petitioner has completed 24 years and that is the condition for his superannuation. It is only after completion of 24 years, a Hav is required to be discharged from service. Therefore, it requires no further interpretation that he had not completed 24 years. We, therefore, direct the respondents to grant 3'd upgradation to the petitioner from the date of discharge. This process be completed within three months. The petition is disposed off accordingly. No order as to costs."

6. The order dated 08.05.2015 in OA 677/2014 in **Ex Dfr Pawan Kumar vs. UOI & Ors.** is to the similar effect, whereby it has been observed to the effect:-

"The case of the petitioner is squarely covered by the decision of this court in OA No.60/2014 entitled Ex. Hav Daya Ram Vs. UOI & Ors. The contention of the learned counsel for the petitioner is

that he has been denied 3rd financial up gradation in the rank of Nb/Risaldar after completion of 24 years of service. The stand of the respondents is that he has completed 24 years and one day of service. This issue has already been decided by us in the aforementioned case. We accordingly hold that the judgment in OA No.60/2014 squarely covers the case of the petitioner and direct the respondents to grant 3rd financial up gradation to the petitioner from the date of his discharge. Let the process be completed within three months from today. The petition stands disposed off accordingly. No order as to costs."

7. There is not a whisper of an averment in the counter affidavit of the respondents that the applicant had not completed a period of 24 years when he was discharged on 31.07.2010. Thus, merely because he was discharged from service w.e.f. 31.07.2010 on the last day of the month though he had completed a period of 24 years of continuous service on the date of discharge, he cannot be denied the benefits of the 3rd MACP on discharge on the basis of an administrative direction that he had retired on the last day of a month and

had been enrolled on the first day of a month when he had factually completed a period of 24 years.

8. Significantly, the issue involved in the present matter was also considered by the Full Bench of this Tribunal vide order dated 19.05.2015 in OA 1641/2013 in **Banarasi Dass vs. UOI & Ors.** .The issue referred to the Full Bench was to the effect:-

“Whether a Havildar who after the commencement of 6” Central Pay Commission retires just after completion of his tenure of 24 years on the last date of a month is entitled to get MACP(Modified Assured Career Progression)?”,

and the Full Bench vide its judgment dated 19.05.2015 answered the said question in affirmative and it was held that,

“27. Having regard what has been said above, we are of the view that a Havildar who retires just after completion of his tenure of 24 years on the last date of month is also entitled to get MACP. The question posed in para 2 of the judgment is, thus, answered in affirmative by holding that on completion of 24 years of service the 3rd ACP would be payable automatically.”,

9. Further, it was observed vide the order dated 19.08.2015 in OA 1641/2013 of the AFT(RB), Chandigarh, after the reference was answered vide order dated 19.05.2015 by the Full Bench to the effect:-

“We are of the view that the claim of the petitioner for release of enhanced pension, consequent upon grant of 3rd financial up-gradation to him under the ACPS, is a matter virtually relates to pension to which no bar of limitation applies.”

10. Furthermore, it was observed vide this order dated 19.08.2015 in OA 1641/2013 by the AFT(RB), Chandigarh to the effect:-

“In view of the above, it is held that the petitioner is entitled to get 3rd ACP on the date of retirement and consequential revision of his pension w.e.f. 01.10.2008. The actual arrears accruing to the petitioner in the regard are, however, ordered to be restricted to a period of three years preceding the date of filing the present petition i.e. 28.03.2013.”

11. It was observed in **Banarasi Dass vs. UOI** in OA 1641/2013 by the Full Bench vide AFT(RB), Chandigarh at Chandimandir to whom the matter was referred in terms of Section-28 of the AFT Act, 2007 vide Paras-14,15,16,17,18,24,25,26,27 of this order dated 19.05.2015 to the effect:-

“14. The only ground to negate the claim of the petitioner for grant of ACP is that he retired on completion of 24 years of service on 30th September, 2008. The argument of the learned counsel for the respondents is that as the petitioner was enrolled on 1st October, 1984 and discharged after completion of term of 24 years on 30th September, 2008, hence on completion of 24 years, the petitioner is not entitled to get the benefit of ACP as he has served only for 24 years. Had he served one day more of 24 years, there could have been no difficulty to grant him the benefit of ACP also. This is the lone stand which has been taken by the respondents in reply to the legal notice and in the present petition as well. Reference can be made to paras 6 & 7 of the reply. As per the respondents, the catch word in the policy is that an individual serving for more than 24 years can get pay for more than 24 years.

15. The above stand of the respondents is fallacious and does not stand the test of logic. The maximum tenure of service

of Havildar is 24 years. How can a Havildar under normal circumstances serve more than 24 years? Secondly, the requirement to earn 3d MACP is completion of 24 years of service subject to the fact that no promotion was earned during the specified period. Here the petitioner fulfils the above twin conditions, indisputably.

16. Generally construction of word is governed by the context in which it is used and it is dependent on context of the subject matter and the object, purpose or result designed to be accompanied by its use and meaning has to be assigned from the facts and circumstances taken together in each particular case.

17. Where the purpose or object of statute is clear, it should not be defeated by ambiguity even if there is some ineptness in language.

18. The aforesaid Gazette also addresses the problem of such Army personnel who could not earn promotion. The aim and object of granting 3 ACPs on completion of specified periods of service is to grant financial benefits by awarding next pay scale to such Army personnel. In other words, the Government of India, in order to provide obvious relief to such Army personnel as a benevolent measure, took step to grant 3 ACPs. To put it in simple terms, it was a step taken by the Government of India benefitting the Army personnel by granting financial up-gradation to overcome the problem of stagnation in the Army. Keeping the above aim and object in the back ground

of the mind and also the fact what a meaning should be assigned to a term is dependent upon the context in which that word has been used, we are of the considered opinion that here the word 'after' in the Gazette has been used in the sense 'on or completion of 24 years' service to earn the third ACP'.

24. There cannot be two distinct classes of retirees, as described above, further finds support from the contemplated step of the Government -one rank one pay, which is a long standing demand of defence personnel.

25. The only argument advanced by the learned counsel for the petitioner that the petitioner shall be deemed to have been retired on 1" October, 2008 is meritless and has been rightly repelled by the learned Judicial Member. It will not be out of place to mention here that the learned counsel for the petitioner in support of the afore said argument has referred certain decision such as S. Banerjee Vs. Union of India 1990 AIR 285 wherein the question was whether the Service Rules which provided that the petitioner will not be entitled to any salary for the day on which he actually retired up for consideration. It was held therein that such a condition has no bearing on the question as to the date of retirement. Similarly, in C.W.P. 7794 of 2013 Nirmal Singh Versus Union of India and others, decided on 15.07.2014 by the Punjab and Haryana High Court it was held that a person having retired on 31 December, 1985 is entitled to pension with effect from 1st January, 1986. The next relied upon case is Union of India

Versus George, 2003(4) S.C.T. 475 wherein the Kerala High Court has held that the benefit of revision of pension etc. is available to an individual who had retired on 1 January, 1996. There the individual had retired on 31 December, 1995. There the petitioner continued in service till December, 1995 and it was held that the benefit of revision of pension will be available to him as he had retired on 1 January, 1996.

26. *In the case at hand, a copy of PPO with respect to the petitioner filed along with the petition would also show that he is getting pension with effect from 1st October, 2008, meaning thereby the petitioner stood retired on the previous date i.e. 30th September, 2008 on completion of 24 years of service. The fact that his name was struck from the roll on the next day is of no consequence.*

27. *Having regard what has been said above, we are of the view that a Havildar who retires just after completion of his tenure of 24 years on the last date of month is also entitled to get MACP. The question posed in para 2 of the judgment is, thus, answered in affirmative by holding that on completion of 24 years of service the 3rd ACP would be payable automatically."*

CONCLUSION

12. The facts of the instant case are wholly in *pari materia* with the facts of the case in ***Banarasi Dass vs. UOI & Ors.***

in OA 1641/2013, in which case that applicant had been enrolled on 01.10.1984 that is the first day of the month and was discharged on 30.09.2008 that is the last day of the month after completion of 24 years of service and was getting the pension in the rank of Hav w.e.f. 01.10.2008 and was held entitled vide order dated 19.08.2015 of the AFT(RB), Chandigarh where the matter was taken up after the Full Bench order dated 19.05.2015 referred in Para-11 hereinabove to the grant of the ACP benefits and consequential revision of his pension w.e.f. 01.10.2008 with the arrears being confined to run from a date of three years preceding to the institution of the OA.

13. In view of the issue being no more *res integra* in view of the Full Bench order in **Banarasi Dass**(Supra) dated 19.05.2015, the applicant is herein held entitled to the grant of 3rd MACP by fixation of his pay in the Grade Pay of Rs. 4200/- i.e. of the rank of Naib Subedar along with all consequential benefits. The respondents are directed to calculate, sanction and issue the necessary Corrigendum

PPO to the applicant within three months from the date of receipt of the copy of this order. The grant of the arrears in terms of the directions hereinabove would however be payable with effect from the period of three years prior to the institution of the present OA instituted on 06.09.2017.

14. The OA 1571/2017 is disposed of accordingly.

Pronounced in the open Court on the 10th day of March, 2025.

~~[RASIKA CHAUBE]
MEMBER (A)~~

[JUSTICE ANU MALHOTRA]
MEMBER (J)

/TS/