

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

OA 1861/2020

**Ex LS(HY) Jugindro Yanglem
VERSUS
Union of India and Ors.**

..... Applicant

..... Respondents

For Applicant : Mr. Ved Prakash, Advocate
For Respondents : Mr. Karan Singh Bhati, Sr CGSC
Cdr Shantanu Kumar Srivastava,
Dy Judge Advocate, DNL, Indian
Navy

CORAM

**HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE LT GEN CP MOHANTY, MEMBER (A)**

ORDER

The applicant vide the present OA makes the following prayers:

***"A. Direct respondents to grant 2nd ACP to grade pay of 2800/- w.e.f. 23.04.2018.
B. Direct respondents to pay the due arrears of Salary and Pension with interest @12% p.a.e with all the consequential benefits.
C. Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case along with the cost of the application in favour of the applicant and against the respondents."***

FACTS THROUGH PLEADINGS ON THE RECORD

2. The applicant was enrolled in the Indian Navy on 01.02.2005 and was discharged from service on 31.01.2020 after completion of 15 years of service. He was promoted to the rank of Acting LS(HY) on 14.05.2010 with effect from 22.04.2010 and served more than 09 years in the same rank/grade pay till expiry of his engagement. As submitted vide the counter affidavit filed on behalf of the respondents on 14.04.2021, the applicant had an option to apply for undergoing the PO 'Q' HY Course on approval of the administrative authority. However, he submitted his 'Unwillingness for further service' in response to PO 'Q' course on 05.07.2017. The said unwillingness certificate is placed on record as Annexure R-1 to the counter affidavit of the respondents. He was nominated for PO 'Q' Courses as per the tabulation submitted by the respondents vide Para-11 of the counter affidavit as under:-

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Sr.	Courses	W.E.F.	Remarks
(i)	PO 'Q' SR(90:1044) (83:561) dated 07 May 14	07 Jul 14	Not reported (Seamanship School fax message 859/19/11 dated 10 Jul 14).
(ii)	PO 'Q' SR(90:1140) (83:569) dated 21 May 15	06 Jul 15	Sailor's request to proceed for the course in LMC was not approved by HQ SNC in accordance with extant regulations (HQ SNC/SO(P)letter SL/ 2510/22 dated 17 Jul 15)
(iii)	PO 'Q' QA(90:1232) (83:577) dated 19 May 16	25 Jul 16	Not reported (Seamanship School fax message 859/19/11 dated 27 Jul 16).
(iv)	PO 'Q' HY (90:1278) (83:584) dated 05 Jun 17	07 Aug 17	Unwilling for service on course letter (IHQ MoD(N)/DOH letter HO/D/0200 dated 15 Jul 17 and 13 Jul 17)

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3. As per the Modified Assured Career Progression Scheme for PBORs of the Navy as per the Government of India, Ministry of Defence letter no. RP/3312/PAY COM/78/US(MP) D(N-II) dated 19.05.2011, the Government considered the recommendations of the Sixth Central Pay Commission for introduction of the ACP Scheme and accepted to implement the recommendations made by the Sixth CPC for PBOR of the Navy enrolled at the level of

Seaman/Artificer Apprentice/ Artificer(Direct Entry Diploma Holder/Direct Entry Acting Petty Officer as per provisions detailed in the said document and as per Annexure A-1 to the said document. During his tenure in the Indian Navy, the applicant suffered from the disability of Seizure Disorder and was in low medical category S3A2(P). Though the applicant was nominated for the PO 'Q' SR(90:1140) (83:569) dated 21.05.2015 w.e.f 06.07.2015, his request to proceed for the said course in LMC was not approved by HQ SNC in accordance with the extant regulations.

4. The PO 'Q' HY course is a mandatory promotional course and attending the same is unrefutedly the mandatory criteria for promotion to the next higher rank as per Para-4(B)(iii), Appendix-I of Navy Instructions 02/96. The applicant was nominated to undergo PO 'Q' HY course dated 05.06.2017. As he had less than three years residual service from the date of completion of the course, he was required to accept re-engagement to qualify for undergoing the said course and was required to sign for further service in

accordance with Para 14(a) and (b) of Navy Order(Str) 02/2007 as applicable at the relevant time. The applicant was offered re-engagement for service which would have made him eligible for the promotion course and subsequent benefits. The applicant despite having an option to apply for undergoing the PO 'Q' HY course on approval of the administrative authority in accordance with Para-4 of Navy Order 08/2011 rendered his 'Unwillingness for further service' in response to PO 'Q' HY course on 05.07.2017 and thus the respondents as per their counter affidavit declined him the benefit of MACPS in accordance with Para 9 of the Government of India, Ministry of Defence letter no. RP/3312/PAYCOM/78/ US(MP) D(N-II)/11 dated 19.05.2011.

CONTENTIONS OF THE APPLICANT

5. The applicant submits that he had been deputed for the PO 'Q' HY Course 5-6 times but he was in low medical category S3A2(Permanent) and the competent authority had not given approval for joining the course and that though he was deputed for PO 'Q' HY Course no. (90:1278) on

05.06.2017, the same was not approved by the IHQ of MoD(Navy) on 05.07.2017 as he did not have 03 years of residual service as he was to be discharged on 31.01.2020. The applicant submits he gave his unwillingness for further service on 05.07.2017 and was eligible for the 2nd MACP w.e.f 23.04.2018. He submits that he remained in LS rank for more than 09 years and was thus eligible for the second MACP but was not granted the 2nd MACP to the rank of Petty Officer i.e. Grade Pay 2800/-. The applicant submits that he was in medical category S3A2(P) till his discharge from service and thus he was not eligible for further re-engagement. He further submits that it is the choice of individual to ask for re-engagement after expiry of engagement and he cannot be forced for the same. **The applicant submits that he gave his unwillingness from service beyond expiry of his present engagement and not from the course.**

6. The applicant relies on Para-4 of the Navy Order (Str) 02/2007 wherein vide Paras-4,5 and 6, the Principles of

Re-engagement, Criteria for Re-engagement, Occasion for Re-engagement have been prescribed and the same reads as under:-

“

PART II
SERVICE PERSONNEL
NO (Str) 02/07 RE-ENGAGEMENT OF SAILORS
(RP/0805/06)

Introduction

1 The period of enrolment in respect of Non-Artificer/Artificer sailors and terms and conditions governing their further re-engagement of service have been laid down in this Navy Order. The salient aspects have been covered in the succeeding paragraphs.

Enrolment

2 **Non-Artificers** All Matric / Non-Matric Entry Recruits (MER/NMER) are enrolled for an initial period of 15 years calculated from the date of enrolment under the provisions of Regulation 269 of Regs Navy Part III as amended vide SRO 106 of 78 dated 28 Mar 1978 in pursuance of Government of India, Min of Defence letter AD/5374/2/76/2214/S/D(N II) dated 03 Jul 1976

3. **Artificers** Under the provisions of Regulation 269 of Regs Navy Part III as amended vide SRO 363 dated 28 Dec 1988 all Artificer Apprentices (from batch A-91/88 onwards), Navy Entry Artificers and Mechanics are enrolled for an initial period of 20 years, including their training period calculated from the date of their enrolment. Direct Entry Diploma Holders (DEDH) may be enrolled for a period of 10 years.

Re-engagement

4 Principles of Re-engagement Grant of re-engagement is subject to service requirement, and is not to be construed as a matter of right. Depending upon the requirement of service, a sailor can be re-engaged only if he fulfills the following conditions:-

- (a) Out of three annual assessments immediately preceding re-engagement, he must have at least two assessments of character and efficiency not below "VG" and "SAT" respectively
- (b) Must have been recommended by the Commanding Officer as suitable in all respects
- (c) Must have been declared medically fit for satisfactorily carrying out the duties required of him.
- (d) The manpower requirements of the service/cadre must warrant his re-engagement.

5 Criteria for Re-engagement

(a) Sailors fulfilling the conditions laid down in Para 4 above, are considered for re-engagement. However, a final decision regarding grant or otherwise of re-engagement in a particular case is taken based on the overall performance of the sailor during his entire service as reflected by the following factors:-

- (i) Efficiency gradings.
- (ii) Performance in professional courses including CPO(M)/PO(L) courses.
- (iii) Report on Performance Evaluation sheet/ACRs and recommendations for accelerated promotion.

- (iv) Awards and commendations
- (v) Warrant punishments.
- (vi) Adverse comments in ACRS / Performance Evaluation Sheet.
- (vii) Requests for deletion of name from professional/ higher courses etc.
- (viii) Supercession / low merit in Master Chief Selection Boards.
- (ix) Repeated requests for transfer on resettlement or compassionate grounds.
- (b) The sailors will not be re-engaged if they have :-
 - (i) Unsatisfactory record of service.
 - (ii) Expressed unwillingness for further re-engagement
 - (iii) Submitted willingness for re-engagement only for a lesser period.
 - (iv) Undergone resettlement courses / availed of resettlement transfer.
 - (v) Been granted Honorary Commission.

6. Occasion for Re-engagement. A sailor is required to exercise his option for re-engagement for further service on the following occasions:-

- (a) On receipt of Expiry of Engagement serial from CABS.
- (b) On selection for higher rank professional courses/ specialist courses/ non-professional pre-promotion courses in India
- (c) On selection for Deputation abroad for new acquisitions/ refits/ courses and postings etc.
- (d) On promotion to the rank of MCPO, to meet the requirement of minimum residual service as laid down in NI 2/96"

7. The applicant submits that despite his being in low medical category, he could not be disentitled to the grant of second MACP in terms of Para-8 of the GoI MoD letter no. RP/3312/PAYCOM/78/US(MP) D(N-II)/11 dated 19.05.2011. The applicant reiterates that he had never refused any promotion course but had only given his unwillingness for further service after expiry of his then present engagement and was not unwilling from the course and thus the denial of the 2nd MACP to him was illegal and arbitrary.

CONTENTIONS OF THE RESPONDENTS

8. The respondents on the other hand contend that:
- the applicant had not reported for the PO 'Q' SR course dated 07.05.2014 which was to commence with effect from 07.07.2014, and
 - that his request to proceed for the said PO 'Q' SR course dated 21.05.2015 w.e.f. 06.07.2015- were not approved in view of his being in low medical category;

- That the applicant despite nomination for the PO 'Q' QA course dated 19.05.2016 commencing from 25.07.2016 did not report for the same and
- that despite the applicant having been nominated for the PO 'Q' HY course dated 05.06.2017 commenced from 07.08.2017, he submitted his unwillingness for service vide letter dated 05.07.2017.

9. The respondents submit that the attending of the PO 'Q' HY course was a mandatory criterion for promotion to the next higher rank and in terms of Para-9 of the letter no. RP/3312/PAYCOM/78/US(MP) D(N-II)/11 dated 19.05.2011, it has been provided to the effect:-

"9. Regular Promotion. A PBOR granted ACP will continue to be considered for promotion as per existing norms and vacancies. If any individual refuses promotion/promotion related applicable), MACPS will also be denied. If an individual refuses promotion/promotion related course (where applicable) after MACPS. earlier MACPS will not be withdrawn. However, he will not be eligible for further ACP. If he again accepts promotion/promotion related course (where applicable), ACP will also be deferred by the period of debarment due to refusal. Willingness for promotion

will be assumed unless an individual states he is unwilling."

10. The respondents submit that the attending of the PO 'Q' HY course was a mandatory criteria for promotion to the next higher rank i.e. of Petty Officer as per Para-4(B)(iii), Appendix-I of Navy Instructions 02/96(Annexure R3) to the counter affidavit which reads to the effect:-

"4. Petty Officer

A.(i) Commodore, Bureau of Sailor

(ii) Yes

(iii) One year's actual service in the "Acting" rank including six months sea service. See also Article 12.

B.(i) Eighteen months perceeding the effective date of promotion.

(ii) Two years service as Leading Seaman(Acting and confirmed) (including 6 month's sea service in that rank.

(iii) Pass professional examination/board in the respective Schools."

11. The respondents further submit that as the applicant had less than three years residual service from the date of completion of the service which is not refuted by the applicant, the applicant was required to submit his willingness for re-engagement to qualify for undergoing the

said course and was required to sign for further service in accordance with Navy Order(Str) 02/2007 but the applicant submitted his unwillingness for further service in response to PO 'Q' HY course on 05.07.2017 which made him ineligible for promotion course and consequently not entitled to the benefits of the MACPs in accordance with Para-9 of the letter no. RP/3312/PAYCOM/78/US(MP) D(N-II)/11 dated 19.05.2011.

ANALYSIS

12. In terms of Para-8 of the letter no. RP/3312/PAYCOM/78/US(MP) D(N-II)/11 dated 19.05.2011 which reads to the effect:-

“8. Eligibility for Upgradation: The qualifying service for grant of each financial upgradation are enumerated at Para 3 above. The requirement of fulfilling Medical/ACR/ Professional qualifications linked to promotion will not debar grant of the MACPS.”

admittedly the requirement of fulfilling Medical/ACR/ Professional qualifications linked to promotion does not debar the grant of the MACPs.

13. Significantly the respondents do not contend that the denial of the MACP to the applicant was because of his being in low medical category during his service as per the details given in the counter affidavit which read to the effect:-

“11. Para 4.2. Contents of Para 4.2 are partially agreed to. It is humbly submitted that the applicant had been placed in under mentioned LMC during his service:-

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Sr.	Date	Remarks
(i)	21 Aug 10	Initial categorisation for Seizure Disorder (consent: 25 May 10, at home with no witness) and placed in LMC: S3A2(P) T-24
(ii)	05 Feb 11	Continued in LMC: S3A2(P) (T-24+24).
(iii)	13 Sep 11	Placed in LMC: S3A2(P) Pmt for same disability.
(iv)	13 Sep 13 & 13 Sep 15	Extended LMC: S3A2(P) Pmt
(v)	21 Dec 18	Placed in composite LMC: S3A2(P) T-24 for additional disability of overweight.
(vi)	10 Oct 19	Upgraded to S1A1 with respect to overweight, but placed in S3A2(P) Pmt for Seizure Disorder.

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14. Admittedly the applicant was promoted to the rank of Ag. LS(HY) on 14.05.2010 with effect from 22.04.2010 and served more than 09 years in the same rank/grade pay till his expiry of engagement which made him eligible for the

grant of the 2nd MACP, he having spent more than 08 years continuously on the same grade pay as per Para-3 of the letter no. RP/3312/PAY COM/78/US(MP) D(N-II)/11 dated 19.05.2011. However Para-9 of the said letter already reproduced hereinabove in Para-8, makes it clear that if an individual refuses from promotion/promotion related course (where applicable) MACPs will also be denied. The applicant was nominated for the PO 'Q' HY course w.e.f. 07.08.2017, but had submitted his unwillingness for further service and he left with three years of residual service. The letter no. HO/D/0200 dated 05.07.2017 of the Staff Officer to the Chief Hydrographer addressed to the Commodore (Staff Officer (Seaman), the Bureau of Sailors, Mumbai reads to the effect:-

"1. Refer to CABS letter SEA/0101/PO 'Q' HY dated 05 Jun 17.

2. Jugindro Yanglam, LS (HY), 211389-F has been nominated for PO 'Q' HY (90:1278) (83:584) Course from the past three years and the same has not been approved as the sailor is in LMC S3A2 (P) PMT (G-40.3) for Selzure Disorder (copy of HQSNC letter SL/2510/22 is enclosed). The sailor is left with less than three years of residual service and is not willing to sign for further extension



(Copy of Appx 'D' of NO (Str) 02/07 is enclosed).

3. In view of the above, It is requested that sailor name may be deleted from PO 'Q' HY (90:1278) (83:584) course commencing 07 Aug 17."

15. The contention of the applicant is to the effect that his nomination for three years as per the letter dated 05.07.2017 itself indicated that he had not been approved for the said course because of his being in LMC and thus his unwillingness to sign for further extension of service cannot *ipso facto* deny him the grant of the MACP.

16. The respondents however submit that the submission of the unwillingness certificate for further retention in service despite the nomination of the applicant for the mandatory nomination promotion course PO 'Q' HY to commence from 07.08.2017 explicitly by way of the applicant having submitted his unwillingness for further retention and brought forth an implicit refusal to attend the mandatory promotion to the rank of Petty officer and thus in terms of Para-9 of the letter no. RP/3312/PAY COM/78/US(MP) D(N-II)/11 dated 19.05.2011, the applicant having thus refused the

promotion/ promotion related course, he is not eligible for the grant of the further ACP benefits.

17. It is essential to observe that the applicant in the instant case seeks to bring forth on record tenuous contentions that he did not choose to refuse to attend a promotion related course but only refused to continue further in service.

18. That the applicant refused to continue in service is admitted by the applicant itself, he having given his unwillingness for further service on 05.07.2017 and thus consequently he declined implicitly to attend the mandatory PO 'Q' HY course which was to commence w.e.f 07.08.2017. In terms of Para-9 of the letter no. RP/3312/PAYCOM /78/ US(MP) D(N-II)/11 dated 19.05.2011, the applicant thus is not entitled to the benefit of the 2nd MACP. This is so, in as much as the law laid down by the Hon'ble Supreme Court in **UOI & Ors. vs. Manju Arora & Anr.** (2022) 2 SCC 151 the employees who have refused the offer of regular promotion are disentitled to the financial upgradation benefits under

OM dated 09.08.1999 which relates to the grant of ACP benefits to civil employees. Though undoubtedly the said verdict relates to the facts qua Civil government employees, the parameters for grant of MACP are similar even for PBORs of the Indian Navy as per letter no. RP/3312/PAY COM/78/US(MP) D(N-II)/11 dated 19.05.2011 in terms of Para-9 thereof.

19. As observed vide Para-19 of the verdict of the Hon'ble Supreme Court in **UOI & Ors. vs. Manju Arora & Anr.**

(2022) 2 SCC 151 which reads to the effect:-

"19. In the above circumstances, we find merit in the submissions made on behalf of the appellants. Consequently, it is declared that the employees who have refused the offer of regular promotion are disentitled to the financial upgradation benefits envisaged under the OM dated 9-8-1999. In this situation, the Scottish doctrine of "approbate and reprobate" springs to mind. The English equivalent of the doctrine was explained in Lissenden v. C.A.V. Bosch Ltd. wherein Lord Atkin observed at: (AC p. 429)

"... In cases where the doctrine does apply the person concerned has the choice of two rights, either of which he is at liberty to adopt, but not both. Where the doctrine does apply, if the person to whom the choice belongs irrevocably and with knowledge adopts

the one he cannot afterwards assert the other."

The above doctrine is attracted to the circumstances in this case. The employees concerned cannot therefore be allowed to simultaneously approbate and reprobate, or to put it colloquially, "eat their cake and have it too". It is declared accordingly for the respondents in CAs Nos. 7027-28 of 2009."

the doctrine of **"approbate and reprobate"** applies wholly in the instant case and **thus where the applicant herein has the choice of two rights, either of which he is at liberty to adopt, but not both** and the applicant having refused to continue in the service with the Indian Navy on 05.07.2017 having rendered his unwillingness and thus implicitly declined to attend a mandatory PO 'Q' HY course dated 05.07.2017 which was to commence w.e.f. 07.08.2017 vide the letter no. HO/D/0200 dated 05.07.2017, his name had to be deleted from the PO 'Q' HY course commencing on 07.08.2017.

20. The applicant in the instant case thus cannot be allowed to simultaneously approbate to seek the contend that he did not to chose to refuse to contend to attend the



promotion course commencing from 07.08.2017 but simultaneously reprobate to but choose to refuse to continue in service vide his unwillingness for further retention in service, vide his unwillingness certificate w.e.f 05.07.2017 which as scanned as reads as under:-

Appendix D
(Refer to para 13(a) of NO (Str) 02/07)

CERTIFICATE OF UNWILLINGNESS TO SIGN FOR FURTHER SERVICE

1. I understand that I am required vide Commodore, Bureau of Sailors letter / Signal SEA/0101/PO 'Q' HY dated 05 Jun 17 to sign for further service.
2. I hereby declare that I am UNWILLING to sign for further service and wish to be released from the service on completion of my present engagement. I fully understand that the consequence of this declaration will be that any subsequent application from me for re-engagement will not be entertained.

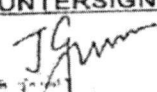
Signed in my presence

Divisional Officer's Signature
Rank & Name Lt Cdr SG Pillai
No 06164-H

Date : 05 Jul 17

Sailor's Signature Jugindro
Name : Jugindro Yanglem
Rank : LS (HY)
No. : 211389-F
Date : 05 Jul 17

COUNTERSIGNED


(In Charge)
Director of Hydrography

File : 808/1

Date : 05 Jul 17

Integrated Headquarters
Ministry of Defence (Navy)
Directorate of Hydrography
West Block IV, Wing-5
RK Puram
New Delhi - 110 066

Forwarded to: -


The Commodore
Bureau of Sailors
Cheetah Camp, Mankhurd
Mumbai - 400088

21. The applicant is thus not entitled to the 2nd MACP as prayed by him.

CONCLUSION

22. The OA 816/2020 is thus dismissed.

Pronounced in the open Court on the 23 day of December, 2025.


[LT GEN CP MOHANTY]
MEMBER (A)


[JUSTICE ANU MALHOTRA]
MEMBER (J)

/TS/