

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

OA 1170/2019 with MA 1916/2019 & MA 616/2023

Ex LS(RP) Shiv Kumar **Applicant**
VERSUS
Union of India and Ors. **Respondents**

For Applicant : Mr. Ved Prakash, Advocate
For Respondents : Mr. Niranjana Das, Advocate

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER

MA 1916/2019

This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of 359 days in filing the present OA. In view of the judgments of the Hon'ble Supreme Court in the matter of **UoI & Ors Vs Tarsem Singh (2008) 8 SCC 648** and in **Ex Sep Chain Singh Vs Union of India & Ors in Civil Appeal 22965/2017** arising out of Civil Appeal Diary no **30073/2017** and the reasons mentioned, the MA 1916/2019

is allowed despite opposition on behalf of the respondents and the delay of 359 days in filing the OA 1170/2015 is thus condoned. The MA 1916/2019 is disposed of accordingly.

MA 616/2023

This is an application filed on behalf of the respondents for condonation of delay of **904** days in filing the counter affidavit. In view of the reasons explained in MA and in the interest of justice, the MA 616/2023 is allowed and the delay in filing the counter affidavit is condoned.

OA 1170/2019

The applicant vide the present OA makes the following prayers:

“(a) Direct respondents to grant 2nd MACP w.e.f. 07.07.2016.

(b) Direct respondents to pay the due arrears of Salary and Pension with interest @12% p.a. 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 Ex LS(RP) Shiv Kumar 135523-H was enrolled in the Indian Navy on 30.01.2003 for initial engagement of 15 years. He was released from service on 31.01.2018 in Low medical category S3A2(A) Pmt after expiry of engagement. He was promoted to rank of Acting LS(RP) on 29.08.2008 with effect from 18.07.2008. He had served for 09 years and 06 months in the rank of LS(RP) till his expiry of engagement.

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 (attached as Annexure A-7 to the OA and as Annexure R-4 to the counter affidavit) and as per Annexure A-1 thereto.

4. The applicant during his tenure in the Indian Navy suffered from the disabilities namely, Fracture Distal Radius(Lt) Optd ICD No. S-52.5 wef 21 September 2013 and Seizure Disorder(ICD) No. G- 40.9 wef 24 June 2009. The applicant was placed in low medical category S3A2(Pmt) for Seizure Disorder and remained in the same category till his release from service i.e. 31 January 2018. The applicant's disabilities were considered by the Competent Authority as aggravated but not attributable with the degree of disablement @20% for life.

5. The PO 'Q' RP 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 for PO 'Q' RP Course on four occasions i.e. in

November 2012, May 2013, December 2013 and August 2014 in low medical category S3A2(Pmt). As submitted by the respondents, the applicant was nominated for the mandatory promotional course namely PO 'Q' RP course which is one of the mandatory criteria for promotion to the next higher rank in terms of Para-4(B)(iii), Appendix I of NI 02/96 for the fifth time on 27.02.2015 and that as the applicant 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. The applicant was thereafter offered re-engagement for service which would have made him eligible for the promotion course and subsequent benefits but the applicant submitted an unwillingness for further service on 16.03.2015. The said unwillingness certificate of the applicant is placed as Annexure R-3 to the counter affidavit of the respondents. That the applicant gave his unwillingness certificate for further service and a letter for deletion of his name from the PO 'Q' RP course was sent to

CABS on 16.03.2015 is also so stated by the applicant in the OA and borne out through Annexure A-4 attached to the OA.

6. As, the applicant despite having an option to apply for undergoing the PO 'Q' RP 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' RP course on 16.03.2015, 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

7. The applicant submits that he had been deputed for the PO 'Q' RP Course four times from 21.11.2012 to 11.08.2014 but had not been found fit by the competent authority for joining the course due to his low medical category and his name was deleted from the said courses and that when he was deputed to the said PO 'QA' RP course 5th time commencing from 27.04.2015 to 10.10.2015 vide CABS

letter no. SEA/0101/ PO 'Q' RP dated 27.02.2015 as he did not have 03 years residual service and was about to be discharged on 31.01.2018 the applicant thus gave his unwillingness for further service and his name was deleted from PO 'Q' RP course on 16.03.2015 and he was discharged from service on 31.01.2018 on expiry of his engagement in low medical category. The applicant submits that he remained in LS(RP) rank for more than 09 years and was thus eligible for the 2nd MACP but was not granted 2nd MACP to the rank of Petty Officer i.e. grade pay of 2800/- to which he as per Para 3 of GoI MoD letter No. RP/3312/PAY COM/78/US(MP) D(N-II)/11 dated 19.05.2011, he was eligible to.

8. It was further submitted on behalf of the applicant that as per para 8 of GoI MoD letter No. RP/3312/PAY COM/78/US(MP) D(N-II)/11 dated 19.05.2011 issued to the Chief of Naval Staff, the requirement of fulfilling Medical/ACR/Professional qualification linked to promotion does not debar grant of the MACPs. The applicant has further

submitted that he had given unwillingness from further service after expiry of his engagement and this unwillingness was not from the course and that the applicant was not found fit for joining the course and that the applicant has been deprived of getting the MACP benefit legally and arbitrarily.

9. Reliance was further placed on behalf of the applicant on the letter no. SEA/0101/ PO 'Q' RP course dated 27.02.2015 in relation to PO 'Q' RP(90:1042) dated 27 April to 10 October, 2015 with specific reference to Para-5(d) which states to the effect:-

“5.(a)....

(b)....

(c)....

(d) Sailors are to be medically fit. Sailors with medical category S1A1 only are to be transferred for the course(Seamanship School Phase of PO 'Q' course is physically demanding and only those LMC sailors who have fair chance of successfully completing the course curriculum including DC/FF and survival at sea be deputed). Sailors placed in low medical category S2A2 and below are to obtain prior approval from Administrative Authority vide No 08/2011 and IHQ of MOD(Navy) letter MH/1809 dated 08 Jun 06.

(e)....

(f)....

.

.

(i)

”

to submit that in as much as in terms of para-5(d) thereof reproduced hereinabove, Sailors with medical category S1A1 **only** are to be transferred for the course (Seamanship School Phase of PO 'Q' course which was stated to be a physically demanding course that and it had been specified therein that only those LMC sailors who have fair chance of successfully completing the course curriculum including DC/FF and survival at sea be deputed) and that thus as the medical condition of the applicant was earlier found not fit by the Competent Authority for attending the course with there being no change in the applicant's medical category of S3A2, his submission of his unwillingness for further service after expiry of his terms of engagement could not have been acted upon against him by the respondents as the Sailors placed in low medical category S2A2 and below are to obtain prior approval from Administrative Authority vide No. 08/2011 and IHQ of MOD(Navy) letter MH/1809 dated 08 Jun 06.

10. 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-engagemen*
 - (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”*

CONTENTIONS OF THE RESPONDENTS

11. The respondents have reiterated that the applicant was nominated for PO 'Q' RP course four times in low medical category S3A2 but on each occasion the Competent Authority had not found him fit for the course and his name was deleted from the course on each occasion but that though in February, 2015, the applicant was nominated for the mandatory promotional course PO 'Q' RP course which is the mandatory criteria for promotion to the next higher rank as

the applicant had less than three years residual service from the date of completion of the course, he was required to accept the re-engagement to qualify for undergoing the said course which he declined and rather submitted his unwillingness for further service which made him ineligible for the promotion course and consequently the applicant was not entitled to the benefits of the MACPS in accordance with Para 9 of GOI/MOD letter RP/3312/PAY COM/78/US(MP) D(N-II)/11 dated 19.05.2011.

ANALYSIS

12. In terms of Para-8 of the letter no. RP/3312/PAY COM/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.**

14. The applicant was enrolled in the Indian Navy on 31.03.2003 was promoted to the rank of AG Leading Seaman(RP) wef 18.07.2008 and remained in the same rank till his retirement i.e. 31.01.2018 i.e. for more than nine years and thus the same made him eligible for the grant of the 2nd MACP, he having spent more than eight 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 which reads 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 course (where 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.”-

makes it clear that if an individual refuses from promotion/promotion related course (where applicable) MACPS will also be denied.

15. The applicant was nominated for the PO 'Q' RP course w.e.f. 27.04.2015 to 10.10.2015, but he admittedly gave his unwillingness to sign for further service on 16.03.2015. The respondents submit that the submission of the unwillingness certificate for further retention in service despite the nomination of the applicant for the mandatory promotion course PO 'Q' RP course commencing from 27.04.2015 to 10.10.2015 **explicitly** by way of the applicant having submitted his unwillingness for further retention vide the unwillingness certificate dated 16.03.2015 brought forth

his 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, and the applicant having thus refused the promotion/ promotion related course, he is not eligible for the grant of the further ACP benefits.

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

17. That the applicant refused to continue in service is admitted by the applicant itself, he having given his unwillingness for further service on 16.03.2015 and thus consequently he declined implicitly to attend the mandatory PO 'Q' RP course which was to commence w.e.f 27.04.2015 to 10.10.2015. 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 brings forth that 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 MACPS 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.

18. 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 had the choice of two rights, either of which he was at liberty to adopt, but not both** and the applicant having refused to continue in the service with the Indian Navy on 16.03.2015 and having rendered his unwillingness therefore thus implicitly declined to attend a mandatory PO 'Q' RP 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, and thus his name had to be deleted from the PO 'Q' RP course commencing on 27.04.2015 to 10.10.2015 vide CABS letter no. SEA/0101/ PO 'Q' RP dated 27.02.2015.

19. The applicant in the instant case thus cannot be allowed to simultaneously approbate to seek to contend that he did not choose to refuse to attend the promotion course commencing from 27.04.2015 to 10.10.2015 but simultaneously reprobate to choose to refuse to continue in service vide his unwillingness for further retention in service, vide his unwillingness certificate w.e.f 16.03.2015.

20. We are fortified in our above analysis, in view of OA 1861/2020 in the case of **Ex LS(HY) Jugindro Yanglem vs UOI & Ors** and in OA 1880/2020 in the case of **Ex LS(GS) Rajesh Bhandari vs UOI & Ors.** having been dismissed in facts *pari materia* to the instant case vide orders dated 23.12.2025 and 17.02.2026 of the AFT (PB) New Delhi.

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

CONCLUSION

22. The OA 1170/2019 is thus dismissed.

Pronounced in the open Court on the 12th day of March, 2026.

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

/TS/