

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

OA 1185/2019

Ex LS QA II Kavinder Kumar **Applicant**
VERSUS
Union of India and Ors. **Respondents**

For Applicant : Mr. Ved Prakash, Advocate
For Respondents : Mr. Avdhesh Kumar, Advocate

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE REAR ADMIRAL DHIREN VIG, 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.04/11/2015.

(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 THE PLEADINGS ON RECORD

2. The applicant Ex LS QA II Kavinder Kumar was enrolled in the Indian Navy on 31.07.2002 and was

discharged from service on 31.07.2017 after completion of 15 years and 01 days of service. The applicant was promoted to the rank of Acting LS QA II on 08.01.2008 with effect from 05.08.2007. The applicant had served 09 years and 11 months in the rank/grade pay of LS II till his expiry of engagement. That the applicant was nominated for PO 'Q' QA course seven times in service is reflected in Para-11 of the counter affidavit filed on 02.09.2020 of the respondents as under:

“

Sr.	Course Letter No & dated	From	To	Remarks
(i)	SEA/0101/ PO 'Q' QA dated 01 Nov 2011	09 Jan 2012	07 Jul 2012	Hospitalised
(ii)	SEA/0101/ PO 'Q' QA dated 09 Apr 2012	09 Jul 2012	05 Jan 2013	Not Reported
(iii)	SEA/0101/ PO 'Q' QA dated 17 Oct 2012	07 Jan 2013	05 Jul 2013	LMC not Approved
(iv)	SEA/0101/ PO 'Q' QA dated 06 May 2013	08 Jul 2013	11 Jan 2014	LMC not Approved
(v)	SEA/0101/ PO 'Q' QA dated 01 Nov 2013	06 Jan 2014	12 Jul 2014	LMC not Approved
(vi)	SEA/0101/ PO 'Q' QA dated 30 Apr 2014	30 Jun 2014	27 Dec 2014	LMC not Approved
(vii)	SEA/0101/ PO 'Q' QA dated 16 Oct 2014	29 Dec 2014	27 Jun 2015	Unwilling

”

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 a disability named Recurrent Shoulder Dislocation(Lt) Optd ICD No. S.43.0 on 12.10.2011 whilst posted at INS Taragiri, a field area and was medically downgraded to category S3A2(Pmt) and remained in the same category till his release from service on 31.07.2017. The applicant was thus not found fit for the PO 'Q' QA course from

- 07.01.2013 to 05.07.2013,
- 08.07.2013 to 11.01.2014,
- 06.01.2014 to 12.07.2014 and
- 30.06.2014 to 27.02.2014

and had not reported for the course from 09.07.2012 to 05.01.2013 and earlier when he had been was nominated the said course from 09.01.2012 to 07.07.2012 as he was hospitalized.

4. The applicant on having been nominated again the 7th time for the said course from the period from 29.12.2014 to 27.06.2015 rendered his unwillingness for the same and consequently despite having been in service for 09 years and 11 months in the grade pay of LS, he was not granted financial upgradation under the MACP Scheme in terms of para 9 of GOI/MOD letter RP/3312/PAY COM/78/US(MP) D(N-II) dated 19.05.2011.

5. The applicant's certificate for unwillingness to sign for further service dated 11.11.2014 has been annexed by the

respondents to their counter affidavit as Annexure R-3 which as scanned is as under:-

57A

72
Annexure R3

CERTIFICATE OF UNWILLINGNESS TO SIGN FOR FURTHER SERVICE

I understand that I am required vide Commodore Bureau of Sailors Mumbai letter/Signal/ EESSEA/101/PC 'B' DA dated 16 Oct 14 to sign for further service.

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 consequences of this declaration will be that any subsequent application from me for re-engagement will not be entertained.

Date: 11/11/14

Kavinder Kumar
(Sailor's Signature)

Name: KAVINDER KUMAR
Rank: LS BDTI
No.: 322009AD

Signed in my presence

[Signature]

(Signature of Div. Officer)

Name: (श्री अशोक चंद्रन)
श्री अशोक चंद्रन
Rank: कप्तान - 300
(कप्तान - 300)
Bunnery Officer

COUNTERSIGNED

[Signature]

(Suprobro:K:De)
Commandore
Commanding Officer

File No. 311/03

INS Angre
SBS Road
Mumbai - 400023

Date: 12 Nov 14

Forwarded to:

The Commodore
Bureau of Sailors
Cheetah Camp, Mankhurd
Mumbai - 400 088

CONTENTIONS OF THE APPLICANT

6. The applicant submits that as per para-14(a) of Navy Order(Str) 02/2007, no sailor who has less than three years residual service from the date of completion of service, will be deputed to undergo for higher rank professional/specialist qualification or for a foreign language course and as the applicant did not have three years of residual service he ought not to have been deputed for PO 'Q' QA Course commencing from 29.12.2014 to 27.06.2015 as he was to be discharged from service on 31.07.2017 and as the applicant was asked to extend his engagement period beyond 31.07.2017, he had refused and given his unwillingness for further service.

7. The applicant has further submitted that he being in a medical category S3A2(Pmt) as per Navy Order(Str) 02/2007 Para 11(b) the applicant was not eligible for re-engagement after expiry of his then engagement, and as para 11(b) of Navy Order(Str) 02/2007 states that the sailor in permanent low medical category below S2A2 would not normally be given

re-engagement except in exceptional cases where the medical category is likely to be upgraded in the next review/re-categorisation Medical Board grant of re-engagement, **the applicant had only given his unwillingness for service beyond the expiry of his then engagement and not from the course.**

8. 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

9. The respondents have submitted that the applicant was nominated for mandatory promotional course namely, PO 'Q' QA course which is one of the mandatory criteria for promotion to the next higher rank. Para 4 (B) (iii), Appendix I of NI 02/96 refers in this regard. As per orders in vogue, since the applicant had less than three years residual service from the date of completion of a 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. However, the applicant submitted unwillingness for further service which made him ineligible for promotion course and consequentially not entitled for benefits of MACPS in accordance with Para 9 of GOI/MOD letter RP/3312/PAY COM/78/US (MP) D(N-II)/11 dated 19th May 2011.

ANALYSIS

10. The PO 'Q' QA 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. He was nominated for the PO 'Q' QA Course dated 16.10.2014 for the period 29.12.2014 to 27.06.2015 for which he had submitted his unwillingness dated 11.11.2014. 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.

11. Significantly the respondents do not contend that the denial of the MACP to the applicant was because of his being in low medical category.

12. Admittedly the applicant was promoted to the rank of Ag. LS(QA) II on 08.01.2008 with effect from 05.08.2007 and served more than 09 years and 11 months in the same rank/grade pay of LS II 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 which reads as under:-

“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.”

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

13. 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.

14. That the applicant refused to continue in service is admitted by the applicant itself, he having given his unwillingness for further service on 11.11.2014 and thus consequently he declined implicitly to attend the mandatory PO 'Q' QA course which was to commence w.e.f 29.12.2014. 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.

15. 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 31.07.2017 having rendered his unwillingness and thus implicitly declined to attend a mandatory PO ‘Q’ QA course which was to commence w.e.f. 29.12.2014.

16. The applicant in the instant case thus cannot be allowed to simultaneously approbate to seek to contend that he did not to choose to refuse to attend the promotion course commencing from 29.12.2014 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 11.11.2014.

17. We are fortified in our above analysis, in view of order dated 23.12.2025 in OA 1861/2020 in the case of **Ex LS(HY) Jugindro Yanglem vs UOI & Ors** and order dated 17.02.2026 in OA 1880/2020 in the case of **Ex LS(GS) Rajesh Bhandari vs UOI & Ors.** and OA 1170/2019 in the case of **Ex LS(RP) Shiv Kumar vs. UOI & Ors.** vide order dated 12.03.2026 having been dismissed in facts *pari materia* to the instant case vide orders of the AFT (PB) New Delhi.

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

CONCLUSION

19. The OA 1185/2019 is thus dismissed.

Pronounced in the open Court on the 3rd of March, 2026.


[REAR ADMIRAL DHIREN VIG]
MEMBER (A)


[JUSTICE ANU MALHOTRA]
MEMBER (J)

/TS/