

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

**OA 1880/2020**

**Ex LS(GS) Rajesh Bhandari** ..... **Applicant**  
**VERSUS**  
**Union of India and Ors.** ..... **Respondents**

**For Applicant** : Mr. Ved Prakash, Advocate  
**For Respondents** : Mr. Karan Singh Bhati, Sr CGSC with  
Mr. Prince Goel, Advocate  
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:-

*“8.(a) Direct respondents to grant 2<sup>nd</sup> ACP to grade pay of 2800/- w.e.f. 19.06.2019.*

*(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 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 as Matriculate Entry Recruit (MER) and was released from service in low medical category S3A2 (P) Pmt on 31.01.2020 after completion of 15 years of Service. The applicant was promoted to the rank of Acting LS (GS) on 07.12.2011 with effect from 18.06.2011 and served in the same rank / grade pay till his expiry of engagement. The applicant was downgraded in low medical category S3A2 with effect from 26.05.2010.

3. As per the counter affidavit filed by the respondents dated 25.05.2023, the applicant was nominated for PO 'Q' RC course five times, the details of which are tabulated in Para 3.1 therein as follows:-

“

<b>Sr.</b>	<b>CABS Letter</b>	<b>From</b>	<b>To</b>	<b>Remarks</b>
(i)	PO 'Q' RC (90:1130) (82:515) dated 05 May 15	29 Jun 15	26 Dec 15	LMC not approved
(ii)	PO 'Q' RC (90:1131) (82:516) dated 29 Oct 15	28 Dec 15	25 Jun 16	LMC not approved
(iii)	PO 'Q' RC (90:1222) (82:548) dated 26 Apr 16	13 Jun 16	10 Dec 16	LMC not approved
(iv)	PO 'Q' RC (90:1223) (82:549) dated 04 Nov 16	09 Jan 17	08 Jul 17	Unwilling for further service in response to course nomination
(v)	PO 'Q' RC	10 Jul 17	06 Jan 18	The applicant's

	(90:1270) (82:587) dated 17 May 15			unwillingness for further service was updated on 05 Jul 17 after he being nominated for the course.
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”

4. Vide proceedings dated 03.02.2026, it was directed as under:-

*“Vide order dated 20.01.2026 the OA was reserved for orders.*

2. *On a perusal of the records, it is indicated that the submissions made by the applicant inter alia totally relate to the aspect of the applicant having been deputed for the PO ‘Q’ GS Course No. (90:1223) on 04.11.2016 and further courses which also are for the PO ‘Q’ GS courses.*

3. *The documents that the applicant has filed with the OA also relate to the PO ‘Q’ GS course and rather placed on record by the applicant at pages 28 and 29 is a copy of a fax message dated 02.01.2017 which indicates that the name of the applicant was deleted from the PO ‘Q’ GS Course (90:1223) (82:549) from 09.01.2017 to 08.07.2017 due to his being unwilling for further service.*

4. *The applicant has also placed on record as an Annexure 4 at page 30 the certificate of unwillingness to sign for further service dated 28.11.2016, which is also the very same document that the respondents have placed along with their counter affidavit which was filed on 25.05.2023, which document is placed at page 68.*

5. *The applicant has also placed on record as part of document i.e. of Annexure A3 (Colly) as document No. SEA/0101/PO ‘Q’ GS dated 04.11.2016 at page 24 which shows the nomination of the applicant for the course with the applicant arrayed at serial no 10 of the document which is the enclosure to the bureau letter No. SEA/0101/PO ‘Q’ GS dated 04.11.2016.*

6. *All averments that the respondents have made through their counter affidavits, however state to the effect that the applicant was nominated for PO ‘Q’ RC Course and a tabulation of the nomination*

of the applicant for the courses has been submitted in paragraph 1 at page 55 of the record which reads to the effect:-

“

<b>Sr.</b>	<b>CABS Letter</b>	<b>From</b>	<b>To</b>	<b>Remarks</b>
(i)	PO 'Q' GS (90:1130) (82:515) dated 05 May 15	29 Jun 15	26 Dec 15	LMC not approved
(ii)	PO 'Q' GS (90:1131) (82:516) dated 29 Oct 15	28 Dec 15	25 Jun 16	LMC not approved
(iii)	PO 'Q' GS (90:1222) (82:548) dated 26 Apr 16	13 Jun 16	10 Dec 16	LMC not approved
(iv)	PO 'Q' GS (90:1223) (82:549) dated 04 Nov 16	09 Jan 17	08 Jul 17	Unwilling for further service in response to course nomination
(v)	PO 'Q' GS (90:1270) (82:587) dated 17 May 15	10 Jul 17	06 Jan 18	The applicant's unwillingness for further service was updated on 05 Jul 17 after he being nominated for the course.

”

7. In view thereof, the respondents are directed to clarify the course for which the applicant was nominated as to whether it was PO 'Q' RC Course or PO 'Q' GS Course and whether the averments made in the counter affidavit in fact relate to the PO 'Q' GS course dated 04.11.2016 and whether they affirm the documents that the applicant has placed with the OA.

8. The said clarification be submitted by the respondents without default on the next date of hearing.

9. Re-list the matter for directions on **10.02.2026**.

Copy of this order be given **DASTI.**”

5. Pursuant thereto on 10.02.2026, it was directed as under:-

*“On behalf of the respondents, pursuant to proceedings dated 03.02.2026 has been submitted copy of a document No. RP/3312/CC-13/1 dated 23.03.2016, to submit that there was a change in the nomenclature of Sailors trades which was to come into force with effect from 01.07.2016 and thus apparently qua the nominations of the applicant:-*

“

<b>Sr.</b>	<b>CABS Letter</b>	<b>From</b>	<b>To</b>	<b>Remarks</b>
(iii)	PO ‘Q’ GS (90:1222) (82:548) dated 26 Apr 16	13 Jun 16	10 Dec 16	LMC not approved
(iv)	PO ‘Q’ GS (90:1223) (82:549) dated 04 Nov 16	09 Jan 17	08 Jul 17	Unwilling for further service in response to course nomination
(v)	PO ‘Q’ GS (90:1270) (82:587) dated 17 May 15	10 Jul 17	06 Jan 18	The applicant’s unwillingness for further service was updated on 05 Jul 17 after he being nominated for the course.

”

*as mentioned in the order dated 03.02.2026, the name of the course has to be PO ‘Q’ GS and not PO ‘Q’ RC.*

2. *The matter is reserved for order.”,-*

**Thus, the course for which the applicant was nominated is being considered as the PO ‘Q’ GS Course, and any reference made in the counter affidavit to the PO ‘Q’ RC Course is now being read as a reference to the PO ‘Q’ GS Course.**

6. As per averments made by the respondents in their counter affidavit, the applicant on nomination for PO 'Q' GS (90:1223) (82:549) dated 04.11.2016 commencing from 09.01.2017 had an option to apply for undergoing the PO 'Q' GS course on approval of Administrative Authority. However, as the applicant had less than three years residual service he had rendered "Unwillingness for further service' in response to PO 'Q' GS course nominated vide Commodore Bureau of Sailors (CABS) letter SEA/0101/PO 'Q' GS dated 04.11.2016 which was forwarded to Commodore Bureau of Sailors (CABS) vide Headquarter Ministry of Defence (Navy) letter VCNS/17/Sailors dated 28.11.2016.

7. Though, the applicant was in low medical category S3A2 with effect from 26.05.2010, there was no restriction for medical category for award of MACPS and during the course of submissions made on behalf of either side it has also been submitted on behalf of the respondents that despite the applicant being in low medical category S3A2 with effect from 26.05.2010 he was nevertheless approved for the PO 'Q' GS course commencing from 09.01.2017 to 08.07.2017 but the applicant had tendered his unwillingness for further service in response to the course communication. The respondents have thus declined the grant of the MACPS to the applicant submitting that the applicant had refused the promotion linked course.

8. The copy of the certificate of unwillingness to sign for further service has been placed on record by the respondents as Annexure R1 to their counter affidavit which reads to the effect:-

**“CERTIFICATE OF UNWILLINGNESS TO SIGN FOR FURTHER SERVICE**

*1. I understand that I am required vide Commodore, Bureau of Sailors letter Sea/0101/PO 'Q'GS dated 04 Nov 16 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.*

*SD/-*

*Signature of Sailor*

*Name: Rajesh Bhandari*

*Rank: LS (GS)*

*No.: 211429-Y*

*Dated 28 Nov 16”*

9. 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 Localization-related {(focal) (partial)} idiopathic epilepsy and epileptic syndromes with seizures of locally ICD No. G 40.0. The applicant was placed in low Medical Category S3A2 (P) with effect from 03.11.2018 and remained in the same category till his release from service i.e. till 31.01.2020.

10. The PO 'Q' GS 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 the mandatory promotional PO 'Q' GS (90:1223) (82:549) dated 04.11.2016 but the applicant vide the certificate dated 28.11.2016 already reproduced hereinabove in para no.6 had declared that he was unwilling to sign for further service and wished to be released from the service on completion of his then engagement. The applicant was once again nominated for the PO 'Q' GS course (90:1270) (82:587) dated 17.05.2017 from 10.01.2017 – 06.01.2018 but the applicant's unwillingness on 28.11.2016 is stated to be updated further on 05.07.2017 after his nomination from the course. 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' GS 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' GS course on 28.11.2016 as updated further 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***

11. The applicant submits that he had been deputed for the PO 'Q' GS Course from 29.06.2015 to 26.12.2015, 28.12.2015 to 25.06.2016, and 13.06.2016 to 10.12.2016 but he having been in low medical category S3A2, the competent authority had not given approval for joining the

course and that though he was deputed thereafter for PO 'Q' GS Course (90:1223) (82:549) dated 04.11.2016 and PO 'Q' GS Course (90:1270) (82:587) dated 17.05.2017, 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 that he was eligible for the grant of 2<sup>nd</sup> MACP to the rank of Petty Officer i.e. Grade Pay 2,800/- with effect from 19.06.2019 as he had remained in the rank of Acting LS (GS) with effect from 18.06.2011 till his retirement on 31.01.2020. 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. The applicant further submitted 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.**

12. 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**

10 of 22

**(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”*

13. 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 for the course and thus the denial of the 2<sup>nd</sup> MACP to him was illegal and arbitrary.

### ***CONTENTIONS OF THE RESPONDENTS***

14. The respondents however contend that:

- the applicant had been nominated for the PO 'Q' GS Course (90:1223) (82:549) dated 04.11.2016 from 09.01.2017 – 08.07.2017 and PO 'Q' GS (90:1270) (82:587) dated 17.05.2017 from 10.07.2017 – 06.01.2018, but submitted his unwillingness for further service in response to the post nomination vide letter No. VCNS/17/Sailors dated 28.11.2016;
- that he despite he having been nominated yet PO 'Q' GS Course (90:1270) (82:587) commencing from 10.07.2017-

06.01.2018, the applicant's unwillingness for further service was again updated on 05.07.2017 after he was nominated for the said course.

15. The respondents submit that the attending of the PO 'Q' GS 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.”***

16. The respondents submit that the attending of the PO 'Q' GS 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 preceeding 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."**

17. 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' GS course on 28.11.2016 as updated 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**

18. 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.

19. Significantly, the respondents do not contend that the denial of the MACPS to the applicant was because of his being in low medical category, in as much as it has been submitted by the respondents vide their counter affidavit that there is no restriction of medical category for award of MACPS but submit that in accordance with Para 9 of Government of India/ Ministry of Defence letter RP/3312/PAY COM/78/US (MP) D(N-II)/11 dated 19 May 2011, the applicant is not eligible for grant of MACPS, as the applicant refused promotion linked course.

20. Admittedly, the applicant was promoted to the rank of Acting LS (GS) on 07.12.2011 with effect from 18.06.2011 and served in the same rank Grade Pay till expiry of his engagement i.e. till 31.01.2020 and had served for more than 08 years in the same rank/grade pay till his expiry of engagement which made him eligible for the grant of the 2<sup>nd</sup> 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-13, 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' GS course w.e.f. 10.07.2017, but had submitted his unwillingness for further service and he left with three years of residual service.

21. The applicant submits that despite his nomination for the PO'Q'RC Course (90:1223) (82:549) dated 04.11.2016 for the period 09.01.2017 – 08.07.2017, a fax message dated 02.01.2017 indicated that his name had been deleted from the said course. It is essential to observe that the fax message dated 02.01.2017 placed on record by the applicant himself shows the deletion of the applicant's name from the PO 'Q' GS course as being due to his being unwilling for further service. The remarks in the

said document as annexed to the OA at Page-29, as filed by the applicant himself are reproduced as under:-

**“DELETION FROM PO ‘Q’ GS (90:1223) (82:549) COURSE FROM 09 JAN 17 TO 08 JUL 17**

1.....

2. THE FOLLOWING SAILORS NAME HAVE BEEN DELETED FROM THE ABOVE MENTIONED COURSE VIEW REASON MENTIONED AGAINST EACH:-

<b>SER</b>	<b>NAME</b>	<b>RANK</b>	<b>P.NO</b>	<b>UNIT</b>	<b>REMARKS</b>
A	RAJESH BHANDARI	LS (GS)	211429Y	VCNS SECRETARIAT	UNWILLING FOR FURTHER SERVICE
B	-	-	-	-	-
C	-	-	-	-	-

”

22. 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’ GS** as referred by the applicant and PO ‘Q’ RC as referred by the respondents and ought to record as PO Q ‘GS’ Course as per proceedings dated 10.02.2026, which was to commence to run from 09.01.2017 vide his unwillingness to serve further on 28.11.2016 and consequent unwillingness for further retention brought forth an implicit refusal for the mandatory promotion course 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.

**23. 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.**

24. That the applicant refused to continue in service is admitted by the applicant itself, he having given his unwillingness for further service on 28.11.2016 as updated further on 05.07.2017 and thus consequently he declined implicitly to attend the mandatory PO 'Q' GS course which was to commence w.e.f 09.01.2016 to 08.07.2017 and thereafter from 10.07.2017 to 06.01.2018. 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 2<sup>nd</sup> MACP. This is so, in as much as in view of 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 as per facts thereof relates to 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.

25. 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 28.11.2016 as updated further on 05.07.2017 having rendered his unwillingness and thus implicitly declined to attend a mandatory PO ‘Q’ GS course which was to commence w.e.f. 09.01.2016 to 08.07.2017 and thereafter from 10.07.2017 to 06.01.2018, and consequentially vide the letter no. HO/D/0200 dated 05.07.2017, his name had to be deleted from the PO ‘Q’ GS course commencing on 09.01.2016 to 08.07.2017 and thereafter from 10.07.2017 to 06.01.2018.

26. 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 attend the promotion course commencing from 09.01.2016 to 08.07.2017 and thereafter from 10.07.2017 to 06.01.2018, 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 28.11.2016 as updated further on 05.07.2017 which is reproduced in para no. 8 hereinabove.

27. 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***, having been dismissed in facts *pari materia* to the instant case vide order dated 23.12.2025 of the AFT (PB) New Delhi.

26. The applicant is thus not entitled to the 2<sup>nd</sup> MACP as prayed by him.

### **CONCLUSION**

28. The OA 1880/2020 is thus dismissed.

Pronounced in the open Court on the 17<sup>th</sup> day of February, 2026.

**[LT GEN CP MOHANTY]  
MEMBER (A)**

**[JUSTICE ANU MALHOTRA]  
MEMBER (J)**

AP