

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

5.

OA 5295/2024 with MA 5536/2024

Ex Hav Rabet Singh Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Mr. Sukhbir Singh, Advocate
For Respondents : Mr. Atulesh Saran Mathur, Advocate
Maj Abhishek Kumar, OIC, Legal Cell

CORAM

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

ORDER
23.01.2026

MA 5536/2024

This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of 6568 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 5536/2024 is allowed despite opposition on behalf of the respondents and the delay of 6568 days in filing the OA 5295/2024 is thus condoned. The MA 5536/2024 is disposed of accordingly.

OA 5295/2024

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

“(a) quash and set aside impugned letter no 14906746/NER/LN/Legal 31.10.2024. And

(b) Direct the respondents to grant 3rd MACP of the rank of Nb Sub to the applicant on completion of 24 years of service after condoning shortfall of 13 days in qualifying service. And/or

(c) Direct respondents to pay the due arrears of pay and pension and retiral benefits along with the arrears and @12% interest thereupon.

(d) Any other relief(s) which this Hon’ble may deem appropriate, just and proper in the interest of justice and in the facts and circumstances of the case may also be granted to the applicant;”

UNREFUTED FACTS ON RECORD

2. The applicant was enrolled in the Indian Army on 30.11.1982 and discharged from service on 30.11.2006 under Army Rule 13(3)(III)(i) on completion of terms of engagement in the rank of Hav with 14 days non-qualifying service with the applicant having been OSL with effect from 07.11.1989 to 20.11.1989, the total qualifying service of the applicant is 23 years, 11 months and 17 days. The applicant was granted service pension for the rank of Hav vide PCDA(P), Prayagraj PPO no. S/044681/2006 dated 23.11.2006. He was promoted to the rank of Hav w.e.f. 01.01.2001.

3. The applicant has submitted to the effect that vide the impugned order dated 31.10.2024, he has been apprised that he is not eligible for the grant of 3rd MACP as per the revised policy issued by the Government of India, Ministry of Defence vide letter no. B/33513/ACP/AG/PS-2(c) dated 13.06.2011, in as much as he had not completed the requisite period of 8 years continuous service in the same grade pay for the grant of 3rd MACP.

4. It is essential to observe that the proceedings in the matter had been renotified vide order dated 19.05.2025 in view of the issue before the Larger Bench in OA 2679/2021 which was to the effect:-

“Whether the condonation of shortfall can be allowed for the purpose of grant of MACP in view of the Regulation 18 of the Pension Regulations for the Army, 2008 (Part-1)?”

5. Vide order dated 23.12.2025 of the AFT(PB), New Delhi in OA 2679/2021 in *Ex Hav/Clk GD Asa Ram Jat vs. UOI & Ors.*, it has been categorically observed vide Paras-59 to 61 thereof to the effect:-

“59. On a consideration of the aspects detailed in the analysis, we hold that the Regulation 18 of the Pension Regulations for the Army Part-I (2008) which relates to calculating the length of qualifying service for grant of Pension or Gratuity in terms thereof has no relevance to the self contained definitive scheme of MACPS to the PBORs and thus we concur with the view laid down in the order dated 03.11.2017 in OA 238/2017 of the AFT Principal Bench New Delhi in L/Nk Satyavir Singh (supra) that there can be no condonation of shortfall of the period of service in a particular rank of a PBORs for the grant of the MACPS on completion of 8, 16 and 24 years in terms of the MACPS made applicable to the

Indian Army vide letter no. 14(1)99-D(AG) dated 30.05.2011 issued by the Government of India Ministry of Defence read with the Administrative Instructions dated 13.06.2011 no. B/33513/ ACP/AG/ PS2(c).

60. *At the cost of necessary repetition, it is essential to state that none of the orders relied upon on behalf of the applicant nor any of the orders mentioned in paragraphs 8 and 9 of the Referral Order dated 27.09.2023 in OA 2679 of 2021 make any reference to the order dated order dated 03.11.2017 in OA 238/2017 of the AFT Principal Bench New Delhi in L/Nk Satyavir Singh (supra) as all the orders mentioned in para no 8, as also those relied by the applicant are all after the date 03.11.2017 when the order in L/Nk Satyavir Singh (supra) was pronounced by the AFT (PB) New Delhi and thus in terms of the order of the Larger Bench of this Tribunal in OA 57/2020 in Hav Rajkumar (Retd) vs UOI & Ors dated 14.03.2024 in terms of Para 23 thereof whereby the reference therein was answered, we observe that all subsequent Benches of the Armed Forces Tribunal which were all of equal strength as of the Bench which pronounced the order dated 03.11.2017 in OA 238/2017 of the AFT (Principal Bench) New Delhi in L/Nk Satyavir Singh (supra) which has adjudicated in relation to the same issue qua the aspect of condonation of shortfall for the grant of the benefit of the MACPS to PBORs of the Indian Army were bound to follow the decision in L/Nk Satyavir Singh (supra) which was of a previous Bench of coordinate strength in relation to the ratio decidendi and principle laid down in the said adjudication to the extent of the adjudication in L/Nk Satyavir Singh (supra) that there can be no condonation of shortfall for the grant of the MACPS to the PBORs of the Indian Army in view of Regulation 18 of the Pension Regulations for the Army, Part -I (2008) which relates to Pension Regulations and gratuity. In terms of the Pension Regulations for the Army, Part -I (2008) the said Regulation 18 of the Pension Regulations for the Army Part I, (2008) does not relate to the aspect of financial upgradations at intervals of 8, 16, 24 years which MACPS is only to deal with the problem of genuine stagnation and lack of adequate promotional avenues. The reference is answered accordingly.*

61. *As has been observed by us elsewhere hereinabove, the aspect as to whether non qualifying service on being absent without leave or overstaying leave can be*

regularized is sub judice before the Hon'ble AFT (RB) Jabalpur in in OA 57/2020 in Hav Rajkumar (Retd) (supra) and the said issue is not for determination before us.”-

and thus it is apparent that there can be no condonation of shortfall for the grant of MACPS to the PBORs of the Indian Army in view of Regulation-18 of the Pension Regulations for the Army, 2008 (Part-1) which relates to Pension Regulations and gratuity.

6. It is submitted, however by the learned counsel for the applicant that there is only a period of 14 days of shortfall which relates to the non-qualifying service and that the matter is *sub judice* in OA 57/2020 before the Hon'ble AFT(RB), Jabalpur in *Hav Raj Kumar(Retd). vs. UOI & Ors.* in relation thereto.

7. Vide paras-61 and 62 of the order dated 23.12.2025 of the Larger Bench of the AFT(PB), New Delhi in OA 2679/2021 in *Ex Hav/Clk GD Asa Ram Jat* (Supra), it is observed to the effect:-

“61. As has been observed by us elsewhere hereinabove, the aspect as to whether non qualifying service on being absent without leave or overstaying leave can be regularized is sub judice before the Hon'ble AFT (RB) Jabalpur in in OA 57/2020 in Hav Rajkumar (Retd) (supra) and the said issue is not for determination before us.

62. We thus make it expressly clear that we have not made any observations in relation to the issue and adjudication of the aspect of NQS which is pending before the Hon'ble AFT (RB) Jabalpur in OA 57/2020

with MA 55/2020 in Hav Rajkumar (Retd) vs UOI & Ors and is not pending for determination before us.

8. However, it is essential to observe that vide order dated 19.11.2024 of the Larger Bench of AFT(RB), Chandigarh in OA 332/2024 in the case of *Hawa Singh vs. UOI & Ors.*, it has been observed to the effect:-

“11. Further, reference was made to advisory on grant of MACP in Integrated HQ of MoD (Army) policy dated 05.10.2021 in Para 2(e) which reads as under :-

Para 1. X x x x

“Para 2 (a) to (d) x x x x

2(e) Non qualifying service on account of AWL/OSL or RI period sentenced through court martial will also be deducted while calculating 8 years regular service for grant of MACP.”

The above reference also makes it clear that non qualifying service on account of absence without leave is to be deducted while calculating the period for grant of MACP.”,-

whereby it has been categorically observed to the effect that the non-qualifying service on account of absence without leave(AWL) is to be deducted whilst calculating the period for grant of MACP. In view thereof, the pendency of an issue sought to be raised by the UOI before the AFT(RB), Jabalpur in OA 57/2020 in *Hav Raj Kumar(Retd). vs. UOI & Ors.* does not deter us from proceeding further and adjudicating in the matter.

9. In as much as the non-qualifying service of the applicant of 14 days has not been regularized by the administrative authorities of the respondents, in view of the order dated 23.12.2025 of the Larger

Bench of the AFT(PB), New Delhi in OA 2679/2021 in *Ex Hav/Clk GD Asa Ram Jat vs. UOI & Ors.*, the prayers made by the applicant seeking condonation of shortfall of a period of 13 days(which the respondents contend is of 14 days) in the qualifying length of service for the grant of MACP, cannot be granted.

10. The OA 5295/2024 is thus dismissed.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(RASIKA CHAUBE)
MEMBER (A)

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