

**ARMED FORCES TRIBUNAL  
REGIONAL BENCH  
JABALPUR**

**18 July, 2023**

**CORAM :**

**HON'BLE MR JUSTICE RAJENDRA MENON, CHAIRPERSON  
HON'BLE LT GEN GOPAL R, MEMBER (A)**

**19.**

**OA 94/2021 with MA 165/2021**

**No. 13766733L Nk (TS) Baldev Singh (Retd)**

S/o Shri Kulwant Singh,

R/o Village Shehzada, P.O. Ramdas,

Tehsil : Ajnala,

District Amritsar (Punjab).

**23.**

**OA 03/2020**

**No. 13767998F Nk (TS) Khira Mani (Retd)**

S/o Shri Kaur Singh,

I- 15 Panchsheel Nagar,

Narmada Road, Jabalpur (M.P.).

**24.**

**OA 102/2021 with MA 190/2021**

**No. 13766631P Nk (TS) Manjit Singh (Retd)**

S/o Shri Avtar Singh,

R/o Village Purania Bagharian,

P.O. Alma, Tehsil : Gurdaspur

District Gurdaspur (Punjab).

**.....Applicants**

### Versus

1. **Union of India,**  
Through the Secretary,  
MoD, Govt of India, New Delhi.
2. **The COAS,**  
Army HQ, DHQ, PO  
New Delhi.
3. **The OIC,**  
Records JAK RIFLES,  
Jabalpur (MP)
4. **PAO (OR), JAK RIFLES,**  
Jabalpur (M.P)
5. **The PCDA (P),**  
Draupadi Ghat, Allahabad (UP)

.....Respondents

**For Applicant** : Mr KC Ghildiyal, Sr. Advocate, Mr HC Singh,  
Mr Arya Bhatt and Mr HS Rajput, Advocates

**For Respondents** : Mr Vikram Singh, CGSC

### ORDER

1. The applicants all belonging to JAK RIFLES and retired as Naik (Time Scale) had filed individual applications for being denied grant of MACP - II on the ground of unwillingness for promotion cadre. The grounds for denial being the same and as all the applicants belongs to the same regiment, the order has been clubbed together.

2. **OA 94/2021 with MA 165/2021.** The applicant was enrolled on 28.03.2001 and discharged on 31.03.2018. He had rendered 17 years and 04 days

of service in the Army. The applicant had rendered unwillingness certificates dated 03.11.2015, 22.11.2016 and 14.04.2017 for promotion cadre which were to be conducted in December 2015, January 2017 and August 2017.

3. **OA 03/2020** The applicant was enrolled on 21.01.2002 and discharged on 31.01.2019. He had rendered 17 years and 11 days of service in the Army. The applicant had rendered unwillingness certificates dated 25.09.2017 and 30.06.2018 for promotion cadres to be conducted from 16.10.2017 to 25.11.2017 and 09.07.2018 to 18.08.2018 respectively.

4. **OA 102/2021 with MA 190/2021** The applicant was enrolled on 18.03.2001 and discharged on 31.03.2018. He had rendered 17 years and 14 days of service in the Army. The applicant had rendered unwillingness certificates dated 03.11.2015, 25.11.2016 and 14.04.2017 for promotion cadres to be conducted from December 2015 to January 2016, January 2017 and 28.08.2017 to 14.10.2017 respectively.

5. After implementation of the Sixth Central Pay Commission Report as recommended, a Modified Assured Career Progression Scheme (MACP) for the personnel below Officer rank in Indian Army was introduced vide Govt. of India, MoD, New Delhi letter No.14(1)/1999-D/AG dated 30.05.2011 granting three financial upgradations at intervals of 08, 16 and 24 years continuous regular service. From the records we observed that all the applicants had been granted first MACP upgradation on completion of 08 years of service. All the applicants had submitted unwillingness certificates to attend promotion cadres from Lance Naik to Naik as covered in Para 2 to 4.

6. Hence, the OAs has been preferred to grant the benefit of second MACP upgradation to the applicants on completion of 16 years of service and accordingly

determine salary, retiral benefit, refix pension w.e.f. date of retirement, and pay the arrears of due with interest. Applicants No. 1 and 3 have raised the issue of No 13756933 Havildar Rajinder Singh (Retd), No. 13756993 Havildar Bal Singh and No. 13756934 Havildar Tara Chand (Retd) of the same regiment (JAK RIFLES), getting MACP benefits despite rendering unwillingness certificates. Applicant No. 2 has raised the issue of benefits of second MACP must be extended as on a similarly placed case **AFT, Jabalpur** had extended the relief (*OA No. 55 of 2018, Raghuveer Singh Vs. Union of India & Ors*).

7. With regard to the issue raised by the applicants regarding individuals being granted MACP despite being unwilling for promotion, we had scrutinized the documents submitted by the Records, JAK RIFLES wherein we find that No. 13756933N Havildar Rajinder Singh, No. 13756934W Havildar Tara Chand and No. 13756993 Havildar Bal Singh (Correct Army No. 13756892P) belonging to 14 JAK RIFLES have been granted MACP III as they were willing for promotion but could not clear the promotion cadre.

8. We are of the considered view that the issue involved is no more *res integra*. In *OA No. 05/2020, Ex Naik TS Vijay Kumar Vs. Union of India & others* and four more applications, this Tribunal had passed a detailed order on 27.04.2022 (regarding non-admissibility of MACP in cases where individuals are unwilling for promotion) relying on orders passed by the Supreme Court in the case of *Union of India and others Vs. Manju Arora and another (CA No. 7027-7028 of 2009)* decided on *03.01.2022*. In this case, Supreme Court had held in para 12 of the order that, when an employee is unwilling to attend a promotion cadre and when he does so on his own choice, he is not entitled to claim the benefit of upgradation. The judgment in the case of **Raghuveer Singh** (supra) cannot be

made applicable for the simple reason that now, it cannot be considered good precedent or law in the light of the Supreme Court Judgment passed in the case of *Union of India and others Vs. Manju Arora & another (supra)*.

9. Keeping in view the law laid down by the Supreme Court and followed by this Tribunal in the case of *TS Vijay Kumar* (supra), we see no reason to make any indulgence in the matter. Hence, we **dismiss** the applications.

10. No order as to costs.

(LT GEN GOPAL R)  
MEMBER (A)

(JUSTICE RAJENDRA MENON)  
CHAIRPERSON