

ARMED FORCES TRIBUNAL, REGIONAL BENCH, MUMBAI

ORIGINAL APPLICATION No. 37 of 2018

Thursday, this the 25th day of August, 2022

“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”

Ex. Sgt. Thomas Antony S/o Kurain Antony, R/o Flat No. 203
 C Wing, Butter Cup, 2nd Floor Opp Fr. Agnel School,
 Chinchpada Road, Ambernath West, Thane Dist,
 (Maharashtra)- 421505.

..... Applicant

Applicant Ex Sgt Thomas Antony is present in person.

Versus

1. Union of India, through its Secretary Ministry of Defence,
New Delhi.
2. JCDA (AF) Subroto Park, New Delhi-110010.
3. Air HQ Dte of AV Subroto Park, New Delhi-10.

.....Respondents

Ld. Counsel for the
Respondents.

: **Shri B.K. Ashok,**
Central Govt. Counsel

ORDER

“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs :-

- (a) *Direct the respondent to re fix / recalculate the pension stipulated against my actual qualifying service of 26 years and 18 days in terms of table 77 as per V CPC along with interest. The restriction clause imposed by JCDA (AF) be quashed /set aside.*
- (b) *Direct the respondent to fix the pension at 50% of the maximum pay scale in which retired (4320-85-5595) in terms of V CPC from 01/09/96 for my actual qualifying service of 26 years and 18 days rendered with interest. To grant the pension for 26 years and 18 days of qualifying service, which is equal to and above ½ month’s pension? That totally ignored.*
- (c) *Direct the respondent to grant financial up gradation by considering ACP scheme /MACP Modified Assured Career Progression as provisioned by the GOI in terms of V & VI CPC with all consequential benefits.*
- (d) *Award cost of this application.*
- (e) *Any other relief as may be deemed fit and proper in fact of the circumstance of the case.*

2. Briefly stated, the facts of the case are that the applicant was enrolled in Indian Air Force on 14.08.1970 and was discharged from service on 31.08.1996 on completion of 26 years and 18 days of qualifying service. He was granted pension @ Rs. 2,544/- per month for 25 years of service. Applicant represented his case for grant of service pension for 26 years and 18 days of service and ACP/MACP, which was rejected. Feeling aggrieved applicant has filed instant O.A. for fixing service pension @ 50% of the maximum pay scale for 26 years and 18 days of service and to grant ACP/MACP.

3. Applicant submitted that he was granted pension in accordance with IV CPC at the time of discharge. During V CPC, there were two different implementation dates one from 01.01.1996 and second date from 10.10.1997. The implementations of these two different dates in one CPC was challenged vide O.A. No 41 of 2012, Ex Sgt Thomas Antony Vs Uol & Others which was allowed vide order dated 03.07.2013 and applicant was placed in the pay scale of post 10.10.1997 wef 01.01.1996, pay scale 4320/- 85 - 5595/- Y Group. In implementation of order, PPO was issued and his pension was

fixed in accordance with IV CPC considering his qualifying service 25 years against actual service of 26 years and 18 days whereas in the pension table 77 V CPC there is provision of pension rate beyond 25 years i.e. for 26 years 27 years and thereafter in terms of VI CPC vide PCDA Circular 430/501 have the provision of 26 years, 27 years, 28 years and above. AFRO New Delhi issued clarification letter dated 26.12.2008 on the anomalies in pension wherein it is stated that the pension shall be fixed @ 50% of maximum pay scale in which the pensioner retired. Therefore, the pension fixed as Rs. 2,544/- is not 50% of the maximum scale. 50% of maximum pay scale of Rs. 5,595/- is Rs. 2,797.50 and not Rs. 2,544/-.

4. Applicant further submitted that he served in the rank of Sgt for 12 and ½ years from 01.02.1984 to 31.08.1996 without being promoted to the next higher rank of JWO despite clearing promotion examination JWO Part III in the year 1986. He concluded by vehemently justifying the entitlement of ACP/MACP and revision of pension and prayed that respondents be directed to grant ACP/MACP and to grant maximum pension for 26 years and 18 days of service to the applicant.

5. On the other hand, learned counsel for the respondents submitted that on retirement applicant was granted service pension @ Rs. 719/- per month with effect from 01.09.1996 which was revised @ Rs. 2,544/- per month from 01.09.1996. As per Appendix X of PCDA (P) Allahabad Circular No 555 term of engagement for Air Force Sgt is 25 years who retired between 01.06.1953 to 29.05.1998. Accordingly, applicant was sanctioned service pension for the rank of Sgt for 25 years maximum of the scale as per Table 113 of Circular 430 of PCDA (P) Allahabad. So far as denial of ACP under the Fifth CPC to the applicant is concerned, only PBOR of the Armed Forces enrolled at the level of Sepoy & equivalent and NCs (E) of the IAF were authorized to have an Assured Career Progression (ACP) Scheme. This was applicable till 31.08.2008. In this Scheme, ACP was entitled in 10th and 20th year of service provided no promotion has taken place in last ten years. The respondents claim that the applicant was promoted to the rank of Corporal before his 10th year of service, hence he was not entitled ACP under the Fifth CPC Scheme. As per VI CPC, recommendations, GoI had introduced MACP Scheme which was in supersession of previous ACP Scheme. As per GoI, MoD letter dated 03.06.2011, MACP Scheme would be operational wef 01.09.2008 and applicant was discharged from service on

31.08.1996, prior to the date of implementation of MACP Scheme, hence MACP is not applicable to him.

6. We have heard the applicant and learned counsel for the respondents and have perused the record.

7. From the pleadings on record, the following two questions arise for adjudication in the present case:

- (i) Whether the applicant is entitled pension at the rate of 50% of maximum pay scale for 26 years of service of Sgt?
- (ii) Whether the respondents have erred in not providing benefit of the financial up-gradation in view of the ACP Scheme and MACP Scheme of Sixth CPC?

8. So far as the first question is concerned, applicant was retired from service after completion of 26 years and 18 days of service and he was granted service pension for 25 years of service. On perusal of policy letter, it transpires that applicant is entitled pension of Group Y for 26 years of service @ Rs. 2,628/- per month in terms of Table 77 of V CPC.

9. Adverting to the second question formulated hereinabove, it may be noticed that applicant was enrolled in Indian Air Force on 14.08.1970. He was promoted to the rank of Corporal on 05.10.1974 and he remained in the same rank upto 31.01.1984

for 09 years and 3 months. He was promoted to rank of Sgt on 01.02.1984 and held in the same rank for 12 and ½ years. Govt of India, Ministry of Defence introduced Assured Career Progression (ACP) Scheme in terms of recommendation of the V Central Pay Commission providing financial upgradation in next higher grade pay with regard to employees who were stagnated without promotion in the same grade pay. The recommendations of the Fifth Pay Commission with regard to ACP were notified by the Government of India on 09.08.1999, but so far as the Armed Forces personnel including Air Force personnel, the same were implemented belatedly on 07.08.2003. As per this Policy as well as V CPC, only PBOR of Armed Forces enrolled at the level of Sepoy & equivalent and NCs (E) of the IAF were authorized for an Assured Career Progression (ACP) Scheme. As per this scheme, two financial upgradations under the ACP scheme shall be provided only if no regular promotion during the prescribed period (10 & 20 years) had been availed by a PBOR. If he had already got one regular promotion, he shall be granted 2nd financial upgradation only on completion of 20 years of service. We have noted that before completing 10 years of service, the applicant had picked up a promotion to the rank of Corporal and he was promoted to the rank of Sgt on 01.02.1984 before 20 years of service, hence

he was not granted ACP. The concept of ACP financial upgradation was primarily meant to compensate those who stagnated for more than 10 years and did not get any financial upgradation through promotion. Thus, to sum up the applicant was not eligible for financial upgradation under ACP Scheme.

10. The Sixth CPC was set up by the Government of India to make recommendations in matters to emoluments, allowances and conditions of service also with regard to Armed Forces personnel. The recommendations made by the Sixth CPC were implemented and the Scheme of Modified Assured Career Progression (MACP) was approved which was also made applicable to Air Force personnel and it was issued in supersession of previous ACP Scheme. As per recommendations of the Sixth CPC, benefit of ACP was to accrue after 10 and 20 years of service. However, the Union of India, decided to grant three MACP up-gradations in Sixth CPC on regular intervals of 8 years, 16 years and 24 years of service and also in case of stagnation for 8 years or more in same grade pay. The recommendations of Sixth Pay Commission including the revision of the pay and pay structure came into effect with effect from 01.01.2006. The applicant was

discharged from service prior to implementation of MACP scheme.

11. In view of the forgoing discussions, we are of the considered opinion that applicant is not entitled for financial upgradation as well as for grant of ACP/MACP.

12. Accordingly, Original Application is partly **allowed**. The impugned order rejecting grant of pension for 26 years of service is quashed. The respondents are directed to grant service pension to the applicant for 26 years of service from the date of discharge in terms of Table 77 of 6th CPC as per rule after adjusting the service pension already paid. We make it clear that the applicant shall not be entitled to interest on the amount so accrued. This order shall be complied within four months from the date of presentation of a certified copy of this order failing which the applicant shall be entitled to simple interest @ 8% from the date due till actual date of payment.

13. No order as to costs.

(Vice Admiral Abhay Raghunath Karve)(Justice Umesh Chandra Srivastava)
Member (A) **Member (J)**

Dated : 25 August, 2022

UKT/-