

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, MUMBAI**

**ORIGINAL APPLICATION No. 87 of 2018**

Friday, this the 26<sup>th</sup> day of August, 2022

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

Ex Nk (TS) 2798540L Martand Mahesh Mahadev, Village & Post-Chikhali, Teh-Kagal, Distt-Kolhapur-416235 (Mah) & four others.

..... Applicants

Ld. Counsel for the : **Shri A.P. Singh**, Advocate.  
Applicants

Versus

1. Union of India, (Rep By Defence Secretary) Department of Ministry of Defence, DHQ Post, New Delhi-110011.
2. The Chief of the Army Staff (For Adj. Gen Brach) Integrated Headquarters, MoD(Army) ‘A’ Wing, Sena Bhawan, New Delhi-110011.
3. Colonel The Maratha LI Sectt. DCIDS DOT IHQ Ministry of Defence (Army) ‘K’ House, DHQ Post New Delhi-110011.
4. The Officer-in-Charge records, The Maratha Light Infantry Regimental Centre, Belgaum-590009, Pin-900499, C/o 56 APO.
5. The Commanding Officer, 18 Maratha Light Infantry Regiment, Pin-911618, C/o 56 APO.

.....Respondents

Ld. Counsel for the : **Ms. A. Malhotra**, Advocate  
Respondents. Central Govt. Counsel

### **ORDER (Oral)**

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

- (a) *to quash and set aside the impugned decision of the respondents regarding refusal to grant of ACP II grade pay to the applicants.*
- (b) *to direct the respondents to pay ACP II grade pay to the applicants as applicable in terms of Annexure-1 to MACPS (Annex A-12 of the O.A)*
- (c) *to direct the respondents to pay arrears of pay as well as pension for the period May/Jun 2016 to 31 Jul 2017 and pension thereafter with 12% interest on arrears up to the effective date of payment as applicable as per service record.*
- (d) *Any other relief as it may be deemed fit by the Hon'ble Tribunal in the facts and circumstances of the present case.*
- (e) *Costs of this petition may be allowed to the applicant.*

2. Brief facts of the case are that applicant No 1 alongwith four others were enrolled in the Army with terms of engagement of 17 years colour and 02 years in reserve liability. Service particulars in respect of all the applicants are as under:-

S. No	Army No, Rank & Name	Dates of				Date Cause & of discharge	PPO No
		Enrolment	Appt as L/Nk	First MACP	Promotion of Nk (TS)		
1.	2798540L Ex Nk (TS) Martand Mahesh Mahadev	05.07.2000	01.01.2010	01.09.2008	05.07.2016	31.07.2017 on fulfilling the conditions of enrolment	161201701072
2.	2798873X Ex Nk (TS) Yele Sudhakar Daulat	10.07.2000	07.01.2010	01.09.2008	10.07.2016	-do-	161201700982
3.	2798914W Ex Nk (TS) Khanase Santosh Narayan	12.07.2000	01.01.2010	01.09.2008	12.07.2016	-do-	S/28789/2017
4.	2798978F Ex Nk (TS) Dhakulkar Bhanudas Parashram	21.07.2000	01.01.2010	01.09.2008	21.07.2016	-do-	S/29043/2017
5.	2798622N Ex Nk (TS) Patil Prakash Narayan	08.08.2000	-	01.09.2008	08.07.2016	-do-	161201700981

3. All the applicants were granted MACP-I on due dates.

Grievance of the applicants is that they have been denied MACP-II even after they completed 16 years service which is a criterion for grant of MACP-II as per policy letter dated 13.06.2011. In this regard applicants made several representations on the subject and issued legal notices prior to filing of this O.A. which has been filed for grant of MACP-II.

4. Submission of learned counsel for the applicants is that all the applicants are entitled for grant of MACP-II grade pay between 01 May to 15 July 2016 as per their date of joining service on completion of 16 years colour service in terms of policy letter dated 19.05.2011 according to which MACP for PBORs of the Armed Forces has been notified. Further

submission of learned counsel for the applicants is that respondents have denied MACP-II on the ground of giving unwillingness certificate for promotion which is not justified. His contention is that the three financial upgradations are based on length of service rendered i.e. MACP-I on completion of 08 years service, MACP-II on completion of 16 years service and continuously remaining in MACP-I grade pay for 08 years and MACP-III on completion of 24 years service and continuously remaining in MACP-II grade pay for 08 years preceding to date becoming eligible for grant of the above financial upgradations. In support of their contention the applicants have cited name of their course mate i.e. Nk (TS) Hafsal Babu M, Army No 2798706F, who was granted MACP-II on completion of 16 years colour service and was discharged from service w.e.f. 31.07.2017. The learned counsel pleaded for grant of MACP-II to all the applicants.

5. Per contra, learned counsel for the respondents submitted that the applicants were enrolled in the Army with terms of engagement of 17 years colour and 02 years as reserve. In due course of time they were attested. He further submitted that all the applicants were granted MACP-I on due date. His further submission is that consequent to giving their unwillingness certificate for further promotion they became

ineligible for grant of MACP-II and that is the reason they were denied MACP-II in terms of para 21 of policy letter dated 13.06.2011. He pleaded for dismissal of O.A.

6. Heard Shri AP Singh, learned counsel for the applicant and Ms A Malhotra, learned counsel for the respondents and perused the records.

7. Grievance of the applicants is that they were denied MACP-II even after they completed 16 years colour service. In this regard a reference was made by learned counsel for the applicants that Ex Nk (TS) Hafsal Babu M, who is their course mate, was granted MACP-II but the applicants were denied the same arbitrarily. We have perused the record and we find that Ex Nk (TS) Hafsal Babu M was granted MACP-II erroneously on 10.07.2016 but when the error came to knowledge of the respondents it was cancelled vide Part-II order dated 06.12.2017 (Exhibit R-1). Hence this claim of the applicants is flimsy and has no substance.

8. The Govt of India, Min of Defence had introduced Assured Career Progression Scheme (ACP) for grant of two financial upgradations in the interval of 10 and 20 years continuous service in same grade pay and subject to fulfilling the other eligibility conditions. The above scheme was further

revised after 6<sup>th</sup> CPC to Modified Assured Career Progression Scheme (MACP) for grant of three financial upgradations at intervals of 8, 16 and 24 years of continuous service subject to fulfilling the other eligibility conditions. Accordingly, all the above applicants were granted 1<sup>st</sup> financial upgradation under MACP Scheme on completion of 08 years continuous service and on fulfilling other criteria.

9. We observe that all the applicants had given unwillingness certificates for further promotion. Respondents contention is that after rendering unwillingness certificates the applicants became ineligible for grant of MACP-II in terms of para 21 of policy letter dated 13.06.2011. On perusal we find that para 21 prohibits MACP-II on rendering unwillingness certificate for further promotion. For convenience sake the aforesaid para is reproduced as under:-

*“21. Effect of Refusal of Promotion. If an indl refuses promotion, MACP will also be denied. If an indl refuses promotion after MACP, earlier MACP will not be withdrawn. However, he will not be eligible for further MACP. If he again accepts promotion, MACP will also be deferred by the period of debarment due to refusal. Willingness for promotion will be assumed unless an indl states he is unwilling.*

10. We have perused the certificates given by the applicants. They had rendered certificates for unwillingness for promotion certifying that they were unwilling for further promotion and

wished to retire from service in their present rank on completion of service limits. The applicants had further certified that their option was irreversible which will make them not eligible for promotion any time in future service including financial upgradations under MACP and they had no objection, if they are superseded by their juniors for promotion. Hence, the applicants are not eligible for grant of MACP-II as they themselves rendered unwillingness certificates for further promotion.

11. In view of the above, applicants are not entitled for grant of MACP-II. The O.A. being devoid of merit is liable to be dismissed. It is accordingly, **dismissed**.

12. No order as to costs.

13. Miscellaneous applications, pending if any, stand disposed of.

(Vice Admiral Abhay Raghunath Karve)  
Member (A)

(Justice Umesh Chandra Srivastava)  
Member (J)

Dated : 26.08.2022

*rathore*