

E-COURTARMED FORCES TRIBUNAL, REGIONAL BENCH,  
SRINAGAR AT JAMMUS.No. 10

Original Application No 126 of 2021

Tuesday, this the 24<sup>th</sup> day of January, 2023Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)Hon'ble Lt. General Ravendra Pal Singh, Member (A)

Gurdeep Singh ..... Applicant

Ld. Counsel for the Applicant: **Shri B.S. Samal**, Advocate

Versus

Union of India and Others ..... Respondents

Ld. Counsel for the Respondents : **Ms. Vandana Sharma, Sr. PC**ORDER"Per Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)"

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

- "(i) To call upon the record relating to the service of the applicant and*
- (ii) Direction to the respondents to release the pay and allowances and pensionary benefits to the petitioner by taking into consideration benefits of 2<sup>nd</sup> MACP as applicable to the petitioner w.e.f. 01.01.2011 and thereafter pensionary benefits alongwith interest @ 12 percent till its realisation.*
- (iii) Issue any other order or direction to which this Hon'ble Tribunal deems fit and proper in the circumstances of the case."*

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2. The factual matrix on record is that the applicant was enrolled in the Army on 01.01.1995 and was discharged from service in the rank of Naik on 31.12.2011 after rendering 17 years of service. The applicant was promoted to the rank of Naik and was due for second financial upgradation in the rank of Havildar on completion of 16 years of service as on 01.01.2011 but the same has not been granted to the applicant and he was discharged from service in the rank of Naik without granting benefits of second MACP. This O.A. has been filed for grant of benefit of 2<sup>nd</sup> MACP on completion of 16 years of service.

3. Learned counsel for the applicant submitted that the Government had introduced Assured Career Progression (ACP) Scheme on recommendation of V<sup>th</sup> Central Pay Commission. The said scheme was revised with three financial up-gradations i.e. after 8 years, after 16 years and after 24 years of service. Subsequently, in May 2011, the Government introduced a Modified Assured Career Progression Scheme (in short, MACPS) for Personnel Below Officer Rank superseding the previous ACP scheme. The scheme was made to take effect from 01.09.2008 which was later on made effective from 01.01.2006. It is also submitted that the applicant after discharge from service approached the respondents to grant benefit of 2<sup>nd</sup> AMCP but the same was denied to him. He further submitted that there are no enabling provisions in the MACPS which could disentitle the applicant as the applicant had already completed his terms of engagement of 17 years. The applicant was granted first Modified Assured Career Progression (MACP)/promoted to the rank of Naik on

completion of 08 years of service and was due for second financial upgradation on completion of 16 years of service as on 01.01.2011.

4. The contentions advanced by learned counsel for the respondents, per contra, are that subsequent to issue of MACPS letter dated 30.05.2011, detailed Administrative Instructions for grant of MACPS were issued by the Army Headquarters in June 2011 vide letter dated 13.06.2011. The MACP scheme was made operational for the PBORs w.e.f. 01.09.2008. The conditions and eligibility criteria as per letter dated 13.06.2011 are as below:-

“(a) There shall be three financial upgradations under the MACPs, counted from the direct entry grade on completion of 8, 16 and 24 years service.

(b) Financial upgradation under the scheme will be admissible whenever a person has spent 8 years continuously in the same grade pay.

(c) In case an individual gets one promotion prior to completion of 8 years, he will be entitled only two financial upgradations on completion of 16 & 24 years of service or on completion of 8 years service in the same grade whichever is earlier. If he get two promotions, he will be entitled only third financial up-gradation on completion of 24 years of service or 8 years without promotion in the same grade whichever is earlier.”

5. Learned counsel for the respondents further submitted that applicant was enrolled in the Army on 01.01.1995 and was discharged from service on 31.12.2011 (AN) in the rank of Naik after rendering 17 years of service. The applicant was promoted to the rank of Naik as per his seniority. As per Ministry of Defence letter dated 30.05.2011, MACP scheme was introduced granting three financial up-gradations to JCOs/OR at an interval of 8, 16 and 24 years of continuous regular service or whenever a person spends 8



years continuously in the same grade pay/rank. The applicant was promoted to the rank of Naik and discharged from service on 31.12.2011. Since, the applicant has not completed 08 years of service in the rank of Naik from the date of promotion, he is not entitled to get benefit of 2<sup>nd</sup> MACP of Havildar rank due to policy constraint. He pleaded for dismissal of O.A.

6. We have heard learned counsel for the parties and perused the material placed on record.

7. The applicant was enrolled on 01.01.1995 and was discharged from service on 31.12.2011, meaning thereby he was entitled to be granted first MACP on completion of 08 years of service which has been granted to him in the rank of Naik and second MACPS on completion of 16 years of service as on 01.01.2011 which has not been granted to him. The only contention of the respondents is that applicant was denied 2<sup>nd</sup> MACP on the ground that he had not completed 8 years of service in the rank of Naik from the date of promotion till he was discharged from service on 31.12.2011, as such he was ineligible for promotion to the rank of Havildar.

8. It is worthy of notice that ACP scheme of 2003 as well as MACP scheme of 2011 merely envisaged grant of financial benefits to Personnel Below Officer Rank (PBOR) through placement in a higher pay scale and was not to be considered as functional or regular promotion. Since the applicant has completed 16 years of service as on 01.01.2011, he was eligible for 2<sup>nd</sup> MACP in the rank of Havildar as




O.A. 126/2021 Gurdeep Singh

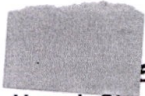
per Govt. of India, Ministry of Defence MACP policy dated 30.05.2011 and SAI 1/S/2008.

9. As a result of foregoing discussion, the O.A. is **allowed**. Since, the respondents have already granted benefit of 1<sup>st</sup> MACP, i.e. Naik to the applicant before discharge from service, the respondents are directed to grant benefit of 2<sup>nd</sup> MACP in the rank of Havildar on completion of 16 years of service as due to him on 01.01.2011 with all consequential/pensionary benefits of the rank of Havildar and issue a Corrigendum PPO accordingly. However, due to law of limitations settled by the Hon'ble Supreme Court in the case of ***Shiv Dass v. Union of India and others*** (2007 (3) SLR 445), the arrears will be restricted to three years preceding the date of filing of the instant O.A. The date of filing of this O.A is 05.04.2021. The Respondents are directed to comply with the order within a period of four months from the date of receipt of certified copy of the order. Default will invite interest @ 8% per annum till actual payment.

10. No order as to costs.

11. Pending Miscellaneous Application(s), if any, shall stand disposed off.

  
(Lt. General Ravendra Pal Singh)  
Member (A)

  
(Justice Umesh Chandra Srivastava)  
Member (J)

Dated: 24<sup>th</sup> January, 2023  
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