

**ARMED FORCES TRIBUNAL
REGIONAL BENCH
JABALPUR**

12 APRIL 2023

CORAM :

**HON'BLE MR JUSTICE SHAILDENRA SHUKLA, MEMBER (J)
HON'BLE LT GEN GOPAL R, MEMBER (A)**

11.

OA 57/2020 with MA 55/2020

No 15368131P Hav Rajkumar (Retd)
S/o Late Shri M Lal Lodhi,
R/o 43, Commissioner Society,
Shankar Shah Nagar,
Rampur (Behind DIG office),
Jabalpur (MP)

.....Applicant

Versus

- 1. Union of India,**
Through the Secretary,
Ministry of Defence,
Government of India, New Delhi.
- 2. The COAS,**
IHQ, MoD (Army),
DHQ, PO, New Delhi.
- 3. OIC,**
Signal Records
Jabalpur
- 4. PAO (OR),**
Signal Records,
Jabalpur (M.P)
- 5. The PCDA (P)**
Draupadi Ghat, Allahabad (UP)

.....Respondents

For Applicant : Mr KC Ghildiyal, Sr Advocate,
Mr HC Singh and Mr Pradeep Dwivedi, Advocates

For Respondents : Mr Amit Naval Paliwal, holding brief of
Mr Vikram Singh, CGSC

ORDER

1. Heard case on 12.04.2023. The issue relates to non-grant of MACP-III due to deduction of Non Qualifying Service(NQS) period.
2. Learned Counsel for the Applicant during arguments has drawn our attention to an Order passed by AFT, RB, Jabalpur in *OA 10/2016, Ex Hav Devinder Singh Vs. UOI & Ors* on 26.04.2019 which is based on another Judgement pronounced by AFT, RB, Chennai in *OA 108/2016, Ex Hav M. Sankarraj Vs. UOI & Ors.* on 23.11.2017 wherein the Hon'ble Tribunal has considered the provisions of Para 18 of Pension Regulations for Army, Part I (2008) for counting fractional service while computing qualifying service for grant of MACP.
3. When queried about the issue of the applicability of Pension Regulations for Army, Part I (2008) on matters regarding Pay & Allowances during service tenure, the learned Counsel for the Applicant went on to emphasize that this Bench is bound by the decision of aforesaid Judgement of AFT, RB, Chennai, being a Coordinate Bench. In case of any difference/disagreement, the matter has to be referred to Larger Bench of AFT, PB, New Delhi. The Counsel for the Applicant also went on to state that the Judgement rendered by AFT, RB Chennai in OA 108/2016 and by AFT, RB, Jabalpur in OA 10/2016 had already been complied with by the concerned department.
4. Another line of argument advanced by the Counsel for the Applicant is that as the terms of engagement of a Havildar is 24 years of service, the concerned Authority keeping the terms and conditions as enunciated in Regulations for the Army, 1987 should have taken steps so that he completes 24 years of physical service over and above the NQS period. He reiterated that the NQS period should be considered as qualifying service and should not be deducted especially when

granting monetary benefits. The Counsel for the Respondents strongly disagreed and stated that as per terms and conditions only, an individual is discharged and in the total service rendered, the NQS period is deducted for purpose of grant of monetary benefits. In the ibid case, it was due to own fault of the Applicant that he could not complete 24 years of qualifying service for grant of MACP. At this point of time a claim cannot arise.

5. We hold the firm view that Pension Regulations for Army, Part I (2008) is for counting fractional service while computing qualifying service for grant of pension and hence same cannot be made applicable or form the basis for claiming admissibility of Pay & Allowances during service.

6. Hence, we place the matter before the Hon'ble Chairperson of AFT, PB, New Delhi on the administrative side for constituting a Larger Bench to decide on the issue of whether an order by a Coordinate Bench will be taken as the settled law position and hence binding on other Benches of AFT while dealing with similar cases.

7. Registry to forward the concerned case file with copy of this order to Principal Registrar, AFT, Principal Bench, New Delhi.

(JUSTICE SHAILENDRA SHUKLA)
MEMBER (J)

(LT GEN GOPAL R)
MEMBER (A)

A/L