

**ARMED FORCES TRIBUNAL
REGIONAL BENCH
JABALPUR**

20 July, 2023

CORAM :

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

20.

OA 23/2020

No. 2700854Y Nk (TS) Anil Kumar (Retd)

S/o Shri Amar Singh,

R/o Village & P.O. Jhikli Arth,

Tehsil : Palampur, District Kangra (H.P.). – 176059.

....Applicant

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 GRENADIERS,
Jabalpur (MP)
- 4. The CO,**
12 GRENADIERS,
C/o 99 APO, Pin 910812.
- 5. PAO (OR), GRENADIERS,**
Jabalpur (M.P)
- 6. The PCDA (P),**
Draupadi Ghat, Allahabad (UP)

.....Respondents

For Applicant : Mr Arya Bhatt and Mr Gajendra Singh, Advocates

For Respondents : Mr Akash Malpani holding brief of
Mr HS Ruprah, CGSC

ORDER

1. The applicant has filed this application for being denied grant of MACP on the ground of unwillingness for promotion cadre. The applicant was enrolled in the Army on 09.01.2003 in GRENADIERS and was discharged on 31.01.2020 on completion of 17 years and 22 days of service.

2. 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. The applicant had been granted first MACP upgradation w.e.f. 09.01.2011. The applicant had submitted unwillingness certificates dated 23.01.2018, 12.06.2018 and 19.01.2019 to attend promotion cadre from Lance Naik to Naik. The counsel for the petitioner avers that the benefits of second MACP must be extended as on a similarly placed case wherein **AFT, Jabalpur** had extended the relief (*OA No. 55 of 2018, Raghuveer Singh Vs. Union of India & Ors*).

3. Hence, the OA has been preferred to grant the benefit of second MACP upgradation to the applicant on completion of 16 years of service and accordingly determine his salary, retiral benefit, refix his pension w.e.f. 31.01.2020, pay the arrears of salary and other benefits including pension with interest.

4. Respondents have filed a detailed reply. Based on the Govt. of India letter No. 14(1)/1999-D/AG dated 30.05.2011, SAI 1/S/2008, Army HQ had issued administrative instructions vide letter No. B/33513/ACP/AG/PS-2(c) dated 13.06.2011 for modalities for implementation of the MACP. It entitled three upgradations to the next higher pay scale after completing 08 years, 16 years and 24 years of service respectively and any unwillingness to attend promotion cadre amounts to refusal of promotion. The applicant had submitted unwillingness certificates dated 23.01.2018, 12.06.2018 and 19.01.2019 to attend promotion cadre from Lance Naik to Naik (Annexure R/1). Hence, benefits of second upgradation of MACP to the individual on completion of 16 years was denied. As his terms of engagement finished in January 2020, he was duly discharged from service on 31.01.2020.

5. Heard learned counsel for the parties, we are of the considered view that the issue involved in this matter 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.

6. Even though the applicant has relied upon an order passed on 18 January 2019 in **OA No 55/2018** in the case of **Raghuveer Singh vs. Union of India & Ors** (supra) in support of his contentions to say that despite being unwilling for promotion, he is entitled for MACP II, we are of the considered view that 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 subsequently in the case of *Union of India and others Vs. Manju Arora & another (supra)*.

7. 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** this application.

8. No order as to costs.

(LT GEN GOPAL R)
MEMBER (A)

(JUSTICE RAJENDRA MENON)
CHAIRPERSON