

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOCHI**

**O.A. No. 344 of 2019**

Wednesday, the 11<sup>th</sup> day of January, 2023

CORAM:

**HON'BLE MR. JUSTICE K.HARILAL, MEMBER (J) &  
HON'BLE AIR MARSHAL SRK NAIR, PVSM, AVSM, VM, M-in-D, MEMBER (A)**

**Applicant**

Veteran Naik K.M. Haridasan, No.1371708 Y  
Kizhakke Mudirakkalil House  
Puduppanam P.O., Badagara  
Kozhikode, Kerala – 673 105.

(By Adv. V.K. Sathyanathan)

***versus***

**Respondents**

1. Union of India  
Represented by its Secretary  
Ministry of Defence, South Block  
New Delhi – 110 011.
2. The Additional General Personnel Services-(PS-2)  
Adjutant General's Branch  
Integrated Head Quarters of MOD (Army)  
New Delhi - 110011
3. The OIC Records  
Record Office,  
Madras Engineer Group  
Pin-900 493, C/o. 56 APO
4. Principal Controller of Defence Accounts (Pensions)  
Office of the PCDA (P), Draupadighat  
Allahabad, UP.

(By Adv. C.B. Sreekumar, Central Government Senior Panel Counsel)

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOCHI**

**O.A. No. 344 of 2019**

Veteran Naik K.M. Haridasan ..... Applicant  
Versus  
Union of India and Ors. .... Respondents

For Applicant : Mr. V.K. Sathyanathan, Advocate

For Respondents : Mr. C.B. Sreekumar, Central Govt. Senior Panel Counsel

**CORAM:**

**HON'BLE MR. JUSTICE K. HARILAL, MEMBER (J)**

**HON'BLE AIR MARSHAL S. R. K. NAIR, MEMBER (A)**

**ORDER**  
**11.01.2023**

Aggrieved by non-grant of financial up-gradation in the rank of Havildar before his retirement despite having completed 24 years of service in the Indian Army, this applicant has approached this Bench seeking eligible ACP benefits.

2. Shri. V.K. Sathyanathan, the learned counsel for the applicant stated that he joined the Indian Army on 18/04/1980 as a Sepoy and was discharged on 30/04/2004 in the rank of Naik, after completing 24 years and 13 days of service. By this time the applicant had completed 17 years in the rank of Naik. The Fifth

Central Pay Commission introduced the Assured Career Progression Scheme, to cater for the stagnation of Central Government Employees in a particular post due to non-availability of vacancy for promotion. However, the said scheme was not applicable to the Defence personnel, but in the year 2003, MoD introduced the scheme for the Defence Forces personnel also vide Annexure-A2 letter dated 07/08/2003. The scheme was operational with effect from the date of issue i.e. 07/08/2003. As per the scheme there were two financial up-gradations, after 10 and 20 years of service. The applicant was promoted to the rank of Naik in January 1987 and completed 10 years in January 1997. As the scheme was operational with effect from 7/8/2003, he was entitled to 2<sup>nd</sup> financial up-gradation to the rank of Havildar with effect from 07/08/2003, which is the date of issue of the letter. As stated by the learned counsel for the applicant he was not granted the financial up-gradation to the rank of Havildar before or after his retirement. Since he was not aware of the scheme he could not represent earlier. On 02/10/2018 few serving soldiers from MEG & Centre came to the Zila Sainik Office Kozhikode and made effective presentation and classes on various subjects, and from them he came to know about the ACP Scheme. Then he submitted a request in a white paper to the same personnel for action, but no response was received.

3. In the above facts and circumstances, the applicant made Annexure-A3 request to the Record Officer to be sanctioned 2<sup>nd</sup> ACP in the rank of Havildar with effect from 07/08/2003 with consequential benefits like arrears of pay and allowances till his date of retirement, and thereafter his terminal benefits including pension may be re-fixed according to the revision in pay and allowances and may be paid with arrears also. The applicant received a response by Annexure-A4 letter stating that he has not passed MR-1 (Map Reading I) which is mandatory for promotion. This averment is unsustainable since the applicant was never detailed for Map Reading 1 Course. The learned counsel for the applicant stated that the ACP is viewed as a 'safety net' to deal with the problem of genuine stagnation. Isolated posts for Group A, B, C and D employees, who have no promotional avenues have also been granted with the benefit of ACP. Due to non-grant of the benefit of the policy which has been taken out by the Government of India, the applicant has approached this Bench seeking relief.

4. The respondents are represented by Shri. C.B. Sreekumar, the Senior Panel Counsel. The learned Standing Counsel representing the respondents stated that the applicant was enrolled in the Army on 18<sup>th</sup> April 1980 and promoted to the rank of substantive Naik on 01<sup>st</sup> December 1991 and discharged on 30<sup>th</sup> April 2004 under Army Rules 13 (3) item (III) (i) of Army Rules 1954 on fulfilling the

conditions of service. He had completed 24 years and 12 days of service for which he was granted service pension. The learned Standing Counsel representing the respondents submitted that the concept of Assured Career Progression (ACP) for Personnel Below Officer Rank of three services recommended by VI<sup>th</sup> CPC was granted by Government of India vide letter dated 7<sup>th</sup> August 2003 to provide financial benefits to the stagnating personnel of Armed Forces. As per this policy, two ACP up-gradations can be granted to other ranks to the scale of Naik and equivalent after 10 years of service and second up gradation to the scale of Havildar and equivalent after 20 years of service. These two Career Progressions were authorized during the entire service to provide financial benefit to the stagnating personnel of the Armed Forces. The applicant herein completed his first 10 years in 1990 and first promotion was granted to him as Naik in 1991, which is counted against the first progression. His second progression to ACP Havildar was due in April 2000. However he was not eligible for the same as he did not meet the qualifying requirements in that he had submitted his unwillingness for promotion cadre for the next rank of Havildar and he had not passed Map Reading -1 test. The applicant was therefore not granted ACP benefits. The applicant has now filed this Original Application for grant of second ACP. Since the applicant was lacking qualification for the relief sought by him his request does not merit

favourable consideration. There was no injustice done to the applicant and therefore the O.A. may be dismissed.

5. The learned Counsel for the applicant and the Standing counsel representing the respondents are in agreement about the tenure of service of the applicant and also on all aspects of the Assured Career Progression scheme for Armed forces personnel. It is undisputed that this applicant who was enrolled in the Army on 18<sup>th</sup> April 1980 was promoted to substantive rank of Naik and was due for consideration for ACP II up-gradation to the scale of Havildar on having completed 20 years of service. The applicant had completed 24 years and 13 days of service and was discharged on 30/04/2004, with more than 20 years of service and therefore was eligible for consideration for the ACP up-gradation to the rank of Havildar on meeting the conditions laid down in Annexure-A2 policy letter dated 7<sup>th</sup> August 2003.

6. It is the case of the applicant that he was fully qualified for grant of ACP upgradation in the grade of Havildar but was denied the same on un-sustainable grounds. As per the applicant he had completed 24 years of service and discharged on 30/04/2004, while the scheme came into effect on 7/3/2003. Since he was not aware of the Scheme he could not represent till the year 2018 when he was made aware of the Scheme by few serving soldiers from MEG & Centre who

had come to his home town and made presentation and classes on various subjects including the ACP scheme. Per contra, the learned counsel for the respondents stated that although the applicant had completed 24 years and 13 days of service in the Indian Army, and was eligible for consideration for ACP second financial Upgradation to the rank of Havildar, since he had not satisfied certain basic conditions for grant of Assured Career Progression, the same was denied to him. The learned counsel for the respondents drew our attention to Annexure-R3 unwillingness certificate rendered by the applicant stating that he has not willing to undergo Havildar promotion Cadre/HTT class. Further he has stated that he is aware of the contents of policy letter dated 21<sup>st</sup> august 2001 and is also aware that he will not be detailed for subsequent H/J Promotion Cadre/HTT Class consequent to rendering this unwillingness certificate. For ACP upgradation to Havildar, willingness is essential. The Standing Counsel stated that on this basis the applicant is not eligible for ACP II. The next point that has been brought out by the learned counsel for the respondents is that this applicant had not cleared Map Reading I Course, which is a mandatory requirement for grant of ACP Havildar Grade, which he was to clear in April 2000. The learned counsel for the respondents reiterated that since the applicant has not met these two basic

conditions as laid down in the Annexure-A2 policy letter dated 07/08/2003, the applicant was not granted ACP Havildar grade.

7. To consider the case of the applicant what needs to be determined is, if there has been any illegality or irregularity on the part of the respondents in denying him progression to ACP Havildar grade ?

8. Let us first examine annexure-A2 policy which governs grant of ACP. The relevant portion which pertains to qualifying criteria for up-gradation of pay scale from Naik to Havildar and equivalent to Navy and Air force is extracted and placed below:

**"ACP Scheme in Brief**

***5. To provide financial benefit to the stagnating personnel of the Armed Forces, V<sup>th</sup> Central pay Commission (V<sup>th</sup> CPC) had recommended ACP upgradations to the PBOR of the Armed Forces. As per their recommendation, two ACP upgradations may be granted to ORs to the scale of Nk and equivalent after 10 years of service and second ACP upgradation to the scale of Hav and equivalent after 20 years of service.***

***6. Govt. accepting the recommendations of the V CPC issued orders for ACP upgradations vide letter under reference. The salient aspects of the approved ACP Scheme are under :-***



- (a) *There will be two ACP upgradations; first, to the scale of Naik and equivalent after 10 years of service and second, to the scale of Hav and equivalent after 20 years of service.*
- (b) *Individuals will be screened by a screening Board for grant of ACP, which will be the same as DPC/ Promotion Board held for promotion purpose.*
- (c) *ACP upgradations will be subject to meeting the criteria like discipline, educational qualifications, trade classification etc as laid down in the Govt. letter.*
- (d) *OR will be given option to be exercised within one month of grant of ACP to have pay fixed in the new scale either straightway or from the date of grant of next increment in the existing scale.*
- (e) *Pay fixation in the new scale will be subject to a minimum financial benefit of Rs.100/-.*
- (f) *ACP scheme is operative wef 07 August 2003*

**Procedure for ACP Upgradations**

7. **Screening** : *ACP upgradation will be granted by a screening board. The composition of screening board will be same as is constituted for promotion to the rank (in the scale of which ACP upgradation is being considered) as per current practice*

*in various Arms/Services. The board proceedings will be recorded as per format at Appx 'A' to this letter.*

8.     xxx                                   xxx                                   xxx                                   xxx

9.     ***Criteria for Screening : Criteria for screening will be as under :-***

xxx                                   xxx                                   xxx                                   xxx

***(b) For upgradation to Pay Scale of Havildar and Equivalent***

- (i) He should have achieved the requisite trade classification for Havildar and equivalent as applicable to him.***
- (ii) He should be eligible for promotion on the basis of disciplinary criteria applicable for promotion at the time of ACP up-gradation***
- (iii) He should fulfill the requisite educational qualification criteria for promotion to Havildar and equivalent as applicable to his cadre.***
- (iv) He should be within the age and service limits prescribed for promotion to Havildar and equivalent as applicable to him.***
- (v) He should be willing to accept promotion to the next higher rank as and when a vacancy occurs.***

***10. Willingness Certificate : A willingness certificate as per format given at Appx B to this letter will be obtained from the individual that he is willing to accept promotion to the next higher rank as and when a vacancy occurs.***

9. After having gone through relevant aspects of policy letter which have been extracted and placed above, let us examine the two reasons for which the respondents have denied ACP Havildar grade to the applicant. As regards the first reason that the applicant had rendered an unwillingness certificate, we notice Annexure-R3 unwillingness certificate of the applicant is dated 29<sup>th</sup> October 2001, whereas, the scheme was notified by the Government of India much later on 29<sup>th</sup> September 2003, with effective date of 7<sup>th</sup> August 2003. Undisputably, the unwillingness certificate rendered by the applicant was well before notification of the ACP scheme and the scheme taking effect. If that be so, it needs no reiteration that the applicant was not aware of the ramification of the unwillingness certificate rendered by him well before the policy was issued by the Government of India. If that be so, the arguments advance by the learned counsel for the respondents that unwillingness certificate disqualifies the applicant for consideration for ACP financial up-gradation is not sustainable. Therefore, this point of the respondents does not withstand our legal scrutiny.

10. The next point that has arisen is that this applicant has not passed Map Reading–I course. In this regard, the learned counsel for the applicant fervently argued that the applicant did not appear in the mandatory Map Reading I Course, since he was never detailed for this course. In response to this, the learned

counsel for the respondents drew our attention to Annexure-A4 letter, wherein the 3<sup>rd</sup> respondent has intimated the applicant on 23<sup>rd</sup> May 2019 that since the applicant has not passed Map Reading –I course which is mandatory for Havildar promotion, his case for grant of ACP Havildar was not considered. On closer scrutiny we find that the applicant himself had voluntarily submitted Annexure-R3 unwillingness certificate wherein he has very clearly stated that he is not willing to undergo Havildar J/promotion cadre /HTT class and that he is aware of the contents of the policy letter which says that he will not be detailed for subsequent H/J/Promotion Cadre/HTT consequent to rendering this unwillingness certificate. This certificate has also been countersigned by the Company Commander of the applicant stating that the applicant has been clearly explained that he will not be detailed for subsequent Cadre Courses and also that the individual will not represent again for detailment of the said cadre course. If that be so, the applicant not being detailed for Map Reading I Course is based on Annexure-R3 unwillingness certificate rendered voluntarily by the applicant. We find no fault with the respondents in not having detailed the applicant for Map Reading -1 course based on his unwillingness, which ultimately resulted in him not qualifying for ACP up-gradation to pay scale of Havildar and equivalent as provided in para 9 (b) (3) of Annexure-R2 policy letter. Non grant of ACP Upgradation on this ground

is on accord of the voluntary action on the part of the applicant and hence we do not find any reason to interfere with the action of the respondents.

11. In the result, we find no infirmity, illegality or irregularity in the decision of the Respondents in not granting ACP up-gradation to pay scale of Havildar for the reason of not having cleared the mandatory Map Reading –I course.

12. In view of the aforesaid, this Original Application being devoid of merit stands dismissed.

13. No order as to costs.

**Sd/-  
JUSTICE K. HARILAL  
MEMBER (J)**

**Sd/-  
AIR MARSHAL S. R. K. NAIR  
MEMBER (A)**

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