
(2021) 04 AFT CK 0005
In the Armed Forces Tribunal
Case No : Original Application No. 680 Of 2016

Chandra Mohan

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 09-04-2021

Acts Referred:

Armed Forces Tribunal Act, 2007 — Section 14

Citation : (2021) 04 AFT CK 0005

Hon'ble Judges : Sunita Gupta, J;B.B.P. Sinha, Member (A)

Bench : Division Bench

Advocate : A.K. Trivedi, J.S. Rawat

Final Decision : Allowed

Judgement

1. By way of the present application filed under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant is primarily seeking relief of directing the respondents to grant him the benefit of 3rd financial upgradation under the MACPS (Modified Assured Career Progression Scheme) on completion of 24 years of service with effect from 26.09.2015.

2. The facts of the case in brief are that the applicant was enrolled in the Indian Army as Direct Entry Havildar Education Instructor on 26.09.1991 and was discharged from service on 30.09.2015 in low medical category S1H1A3(P)P1E1 after rendering 24 years and 04 days of regular service. The applicant proceeded on leave during the period from 10.12.1993 to 23.12.1993 and during the leave period, when he was on the way to his relative's place at Mathura, he met with a road accident and sustained injuries. After the treatment, he was placed in permanent low medical category. The applicant was in receipt of 1st and 2nd MACP granted on completion of requisite service period. It is stated that when the applicant was detailed to undergo AEC Senior NCOs Promotion Cadre and was thus examined on 28.07.2012, he was found medically unfit for that course, which, as per medical authorities, could have adverse effect on his health in future and on that medical advice, he chose to give unwillingness for promotion

cadre course. The main grievance of the applicant is that he has not been granted 3rd MACP/financial upgradation on completion of required service of 24 years on the basis of the unwillingness certificate given by the applicant. Aggrieved by this denial to grant 3rd MACP on the part of the respondents, the applicant preferred this original application.

3. In the counter affidavit, the respondents, without disputing the facts, as mentioned herein above, submitted that despite the applicant being in permanent low medical category S1H1A3 (P) P1E1 on 27.08.2013, he was retained in service and was discharged on completion of his terms of engagement. It is further submitted that the applicant was granted 1st and 2nd MACP upgradation on completion of 8 and 16 years of service and it is only on his unwillingness to undergo the AEC Senior NCO Promotion Cadre course, as per Para 21 of Integrated HQ of MoD (Army) letter dated 13.06.2011 and Para 2(a) Integrated HQ of MoD letter dated 15.10.2014, he was found ineligible for grant of 3rd MACP financial upgradation. The respondents justified the above action and prayed that the OA be dismissed.

4. Learned counsel for the applicant contended that the MACPS has been introduced for the benefit of the employees who could not get promotion within the service time -frame that has been stipulated therein. He went on to state that the applicant has already got his 1st and 2nd MACPS financial upgradation despite being in low medical category and as the applicant submitted the unwillingness certificate on the medical advice of the authorities, as he was under physical constraints and on the basis of medical unfitness certificate issued by the medical authorities, he cannot be denied the benefit of 3rd MACPS there being no med/ACR/Passing of promotion cadre criteria stipulated as per Para 22. In support of his contention, learned counsel placed reliance on the order dated 24.01.2018 in O.A. No. 153 of 2016 [Ex Havildar Vraiesh Kumar Shankdhar Vs. Union of India & Ors./ and order dated 04.01.2018 in O.A. No. 157 of 2016 [Ex Havildar Jog Dhyan Sharma Vs. Union of India & Ors.' passed by the AFT, Regional Bench, Lucknow, wherein the applicants therein were granted MACPS benefits foregoing the unwillingness certificate to undergo the required course for promotion.

5. Per contra, it is contended by the learned counsel for the respondents that subsequent to issue of MACPS by the Government, detailed administrative instructions for grant of MACP were issued by the Army Headquarters in June 2011 vide letter No. B/33513/ACP/AG/PS-2(c) dated 13.06.2011.

According to Para 21 thereof, if an individual refuses promotion after MACP upgradation, his earlier MACP will not be withdrawn but he will not be eligible for further MACP. This was further clarified in Para 15 of the Appendix to the Instructions that refusal to attend promotion cadre by expressing unwillingness amounts to refusal for promotion. It is also contended that the applicant submitted his unwillingness to undergo senior NCOs Promotion Cadre course and thus he was held ineligible for the 3rd MACP-upgradation. It is contended that

MACP benefits are given in strict adherence to the relevant policy/instructions.

6. We have heard the learned counsel for the parties and have gone through the record.

7. In the case in hand, the short question for our consideration is as to whether the applicant is eligible to get 3rd MACP benefit despite his having expressed unwillingness to undergo criteria course of promotion.

8. It is not in dispute that the applicant has already been granted 1st and 2nd MACP upgradation despite his being in low medical category. It is also an admitted position that when the applicant was detailed to undergo AEC Senior NCOs Promotion Cadre, he was examined by medical authorities on 28.07.2012 wherein he was declared unfit to undergo that course. We have examined this medical certificate dated 28.07. 2012 placed as Annexure A/2 in the OA. We have noted that the medical certificate is signed by Unit Medical Officer and counter-signed by Colonel GS (Trg) of Brigade of the Gaurds Regt Centre. We have also noted that the counter by respondents is silent on this issue of medical authorities declaring the applicant unfit to undergo the cadre course.

9. For better understanding of the circumstances under which the applicant gave the unwillingness certificate and for the sake of convenience, the Medical Fitness/Unfitness Certificate dated 28.07.2012 issued by the Medical Officer (Annexure A/2) and Unwillingness Certificate dated 04.09.2012 (Annexure A/3) given by the applicant are reproduced hereunder :

"MEDICAL FITNESS/UNFITNESS CERTIFICATE IN TERMS OF PARA 11 OF THE AO 12/2009/MT

1. No. 9511789F Rank Hav/AEC Name Chandra Mohan who has been detailed to undergo AEC Sr NCOs Promotion Cadre Ser C-165 to be conducted from 29 Oct 2012 to 29 Dec 2012 has medically been examined and found unfit to undergo above cadre.

2. The above cadre will have any adverse effect on the health of NCO.

Station: c/o 56 APO Sd/o

Dated: 28 Jul 2012 YOGESH DAKHAIVE

MEDICAL OFFICER"

COUNTERSIGNED

Sd/o

Col GS (Trg)

Brigade of the Gaurds Regt Centre

"UNWILLINGNESS CERTIFICATE

It is certified that I, No. 9511789F Rank Hav/AEC Name Chandra Mohan of Gurdas Regimental Centre fully understand the provisions of AEC ROI 01/2007, under which my claim to promotion to the next higher rank will be permanently extinguished as I will not be eligible for further promotion due to not having qualified on upgradation/criteria course/promotion cadre AEC Senior NCOs Promotion Cadre Ser C-165 (Here mention name of the course/cadre). I also understand that here-in-after, I will not be given further chances to undergo any upgradation/criteria course/promotion cadre till my retirement in present rank. Keeping fully aware of the implications of above mentioned ROI, I render on my own accord this permanent unwillingness certificate which is tantamount to refusal of all future promotions, not to undergo the promotion cadre, detailed by AEC Records (Reasons for permt unwilling is Due to Permanent Low Medical cat Shape (A3) P). (Here mention the cause of unwillingness and authenticated proof/documentary evidence of the same be enclosed with this certificate for record). This unwillingness certificate is irrevocable under any circumstances.

Sd/-

No. 9511789F Rank Hav/AE

Name: Chandra Mohan"

10. From the reading of the above, it can be seen that on one hand there is a clear medical opinion which states that the applicant is not only unfit to undergo the course but undergoing this course will have an adverse effect on his health. On the other hand, we also find that there is an unwillingness certificate signed by the applicant which clearly states that the applicant is unwilling to do this course due to his permanent low medical category i.e. SHAPE -3. It has to be remembered that the applicant had become permanent low medical category due to injuries suffered in a two-wheeler road traffic accident.

11. In the above mentioned circumstances when it is clear that the applicant was medically unfit to undergo the promotion cadre course, we fail to understand as to what was the need or relevance of taking an unwillingness certificate from the applicant about attending this course. Additionally, we find that in the counter by respondents there is a loud silence about the medical opinion that the applicant was unfit to undergo this course. The respondents are silent on the issue as to how a medically unfit soldier can attend a cadre course, against the medical opinion, even if he is willing to attend it. We find that the sole logic by respondents is that since the applicant has signed an unwillingness certificate hence he has foregone his future promotion and, therefore, he is not eligible for his 3rd MACP. We do not find the explanation offered by the respondents to be adequate, to justify their stand in this peculiar situation.

12. Primarily, Government has introduced MACP scheme as a welfare scheme because it provides for three financial upgradations at 8, 16 and 24 years service. This scheme provides hope for those employees who, for various reasons, are unable to get promoted. In the present case, the applicant was in

SHAPE-3 permanent and hence was medically unfit for any further promotion even if he had, theoretically speaking, successfully completed the cadre course. Additionally even though, Para 21 of the Integrated HQ of MoD (Army) letter dated 13.06.2011 on MACP, provides that if an individual refuses promotion, MACP will also be denied, however in Para 22 of the same policy letter, it is specifically provided that there will be no Med/ACR/Passing of promotion cadre criteria stipulated for the MACP. Therefore, taking into consideration the circumstances under which the applicant had submitted his unwillingness certificate, it appears to be a fit case where benefit of Para 22 should be extended to the applicant because Para 22 of the policy letter dated 13.06.2011 clearly provides that there will be no Med/ACR/Passing of promotion cadre criteria stipulated for MACP. In this scenario, the applicant cannot be deprived of the 3rd MACP benefit after rendering 24 years of unblemished service. The respondents denied him the benefit of 3rd MACPS on the basis of the unwillingness certificate given by him, which was, as explained hereinabove, given due to his medical conditions and on the medical advice of the authorities concerned.

13. Additionally the matter of grant of MACP despite rendering an unwillingness certificate is no more RES INTEGRA Armed forces Tribunal (RB Kochi) vide its order passed in O.A. No. 170 of 2016 [Ex Hay Zubair P Vs. Union of India and others/ and Armed Forces Tribunal (RB Lucknow) vide its order in the case of Ex Hay Vrajesh Kumar Shankhdhar (supra), have adequately clarified the legal position on this subject matter.

14. In view of the aforesaid discussion, we are of the opinion that in the interest of substantive justice, the applicant is entitled to 3rd MACP financial upgradation as prayed for. He is entitled to third MACP because he had rendered more than 24 years of satisfactory service, but had submitted his unwillingness for attending the promotion cadre course on the basis of his permanent low medical category and the Army Medical Certificate, declaring him unfit for attending the said course. Additionally Para 22 of the policy letter on MACP dated 13.06.2011, clearly stipulates that no Med/ACR/Passing of promotion cadre criteria is stipulated for grant of MACP and this provision seems to be specifically relevant to the circumstances of the present case.

15. With the aforesaid, the original application is allowed and the respondents are directed to grant the benefit of 3rd MACPS upgradation to the applicant with effect from 26.09.2015 i.e. the date of completion of 24 years of regular service, by ignoring the unwillingness certificate given by the applicant for promotion, within a period of four months from the date of receipt of the certified copy of this order, failing which, respondents are liable to pay interest @ 6% per annum till the date of actual payment.

16. There shall be no order as to costs.

Pronounced in open Court on this 9th day of April, 2021.