



SL. No	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGES'S ORDERS
	19.12.2024		WPSB No. 348 of 2024 WPSB No. 352 of 2024 WPSB No. 733 of 2024 <u>Hon'ble Manoj Kumar Tiwari, A.C.J.</u> <u>Hon'ble Pankaj Purohit, J.</u> 1. Mr. Rajesh Sharma and Mr. Lalit Sharma, learned Standing Counsel for Union of India assisted by Ms. Suraiya Naaz, learned counsel for petitioners. 2. Since common questions of law and facts are involved in these Writ Petitions, therefore, they are being heard and decided together. However, for the sake of brevity, facts of Writ Petition (S/B) No. 348/2024 alone are being considered and discussed. 3. In this Writ Petition, petitioners have challenged the judgment and order dated 17.11.2021 passed by Armed Forces Tribunal, Regional Bench, Lucknow (Circuit Bench, Nainital) in Original Application No. 181/2021. By the said judgment, learned Tribunal directed the Competent Authority to consider the claim of respondent for grant of benefit of 1st & 2nd financial upgradation under Modified Assured Progression Scheme (MACP), w.e.f. 03.01.2010 & 03.01.2016 respectively, and to communicate the decision to him within four months from the date of presentation of a certified copy of the order. 4. The judgment rendered by Armed Forces Tribunal is challenged before this Court by relying upon the judgment rendered by Hon'ble Supreme Court in the case of <i>Union of India & Ors. v. Parashotam Dass, 2023 SCC OnLine SC 314</i>, where it was held that judgment rendered by Armed Forces Tribunal can be



		challenged before a High Court, under Article 226 of the Constitution of India. 5. Although, this Writ Petition is filed after nearly three years of passing of the impugned judgment, and there is no explanation for the delay and laches, however, we entertained the Writ Petition and heard learned counsel for petitioners, and perused the record. 6. Respondent was enrolled as Soldier in Garhwal Rifles of Indian Army on 03.01.2002, and he was discharged from service on 31.01.2019, after rendering 17 years' active service in Indian Army. Respondent became eligible for first financial upgradation, under MACP, w.e.f. 03.01.2010, and, thereafter, he became eligible for second financial upgradation, w.e.f. 03.01.2016. The said benefit was denied to respondent, on the ground that he expressed unwillingness for promotion. Respondent approached Armed Forces Tribunal claiming benefit of MACP from due dates by filing Original Application No. 181/2021, which has been allowed. 7. Petitioners have challenged the judgment rendered by learned Tribunal. The impugned judgment is on record as Annexure No. 1 to the Writ Petition. Before the Tribunal, petitioners relied upon a Circular issued by Adjutant General's Branch on 11.07.2018. Paragraph no. 3 of the said Circular, on which reliance was placed by petitioners before the Tribunal, and before this Court, is extracted below : <i>"3. <u>Base Policy Docu.</u> DoPT Letter No 35034/3/2008-Estt (D) dt 19 May 2009 serves as the basic policy letter for grant of MACP. Para 25 Annx 1 on the issue of refusal for promotion reads as under :-</i> <i>"If a regular promotion has been offered but was refused by the employee before becoming entitled to a financial upgradation, no financial upgradation shall be</i>
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allowed as such an employee has not been stagnated due to lack of opportunities. If, however, financial upgradation has been allowed due to stagnation and the employees subsequently refuse the promotion, it shall not be ground to withdraw the financial upgradation. He shall, however, not be eligible to be considered for further financial upgradation till he agrees to be considered for promotion again and the second or next financial upgradation shall also be deferred to the extent of period of debarment due to the refusal."

8. Perusal of paragraph no. 3 of the aforesaid Circular reveals that financial upgradation under MACP can be denied to an employee, if regular promotion is offered to him, and the employee refuses to accept the promotion, so offered. There is nothing on record to show that respondent was offered promotion and he refused to accept the promotion. In fact, he retired from the same post, even after serving for 17 long years in the Army.

9. Learned counsel for petitioners placed reliance upon the letter dated 30.12.2016 issued by the Office of Adjutant for contending that promotion was offered to respondent. The said letter reads as under :

"1056/LN/A

30 Dec 2016

ADJT OFFICE

LNK TO NK PROMOTION CADRE: FEB-MAR 2017

1. *Lnk to Nk promotion cadre will be commencing wef **01 Feb 2017** onwards at unit loc. List of Lnk who are coming in the seniority to attend the cadre is as per appx att to this ION*

2. *Coys are requested to:*

- (a) Check correctness of nominal roll and intimate name of leftout pers.*
- (b) Fwd wiling/unwillingness cert to this office **by 15 Jan 2017**.*
- (c) Apch with pers on ERE & desp the suitable relief under intimation to this office"*

10. The aforesaid letter does not indicate that respondent was offered any promotion, and it only shows that respondent had become eligible for promotion, as per his seniority. Therefore, the ground taken by petitioners for denying benefit of MACP to



13. Pending application(s), if any, also stand disposed of.

(Manoj Kumar Tiwari, A.C.J.)
19.12.2024

Digitally signed by RAHUL PRAJAPATI
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