

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

CPSW No.104/2011 in
[SWP No.324/2003]

Reserved on : 15.07.2025
Ponounced on: 22.07.2025

Naik Gulshan Singh, aged 39 years,
S/O Shri Harnam Singh,
R/O Village Platan, P.O. Pallanwalla,
Tehsil Akhnoor, District Jammu.

..... Petitioner(s)

Through: Mr. R. K. Gupta, Sr. Advocate with
Mr. Udhay Bhaskar, Advocate.

Vs

1. General V. K. Singh,
Chief of the Army Staff,
Army Head Quarter,
New Delhi.
2. Shri Pardeep Kumar,
Secretary to Government,
Ministry of Defence,
South Block, New Delhi.
3. Commanding Officer,
Col. Sanjeev Kumar Madhal,
Unit 5 JAK LI C/O 56 A.P.O.
Pathankote.

..... Respondent(s)



Through: Mr. Vishal Sharma, DSGI.

CORAM: HON'BLE MR. JUSTICE M A CHOWDHARY, JUDGE

JUDGMENT

01. Petitioner, Naik Gulshan Singh, was enrolled as Sepoy in the Indian Army in the year 1990 and inducted into 5 JAK Light Infantry, and was promoted as Naik in April, 1999 but was discharged from service by the Commanding Officer vide order dated 22.04.2002 under Rule 13(3)(v) of the Army Rules.
02. Petitioner challenged his discharge order by filing SWP No.324/2003 before this Court and a coordinate bench vide judgment dated 02.12.2008, allowed his petition and impugned order, whereby he had been discharged

from service, was quashed with a direction to re-instate him in service and held that he shall be presumed to be in service, with all consequential benefits, if he was not gainfully employed during the intervening period.

03. Dissatisfied with the judgment passed by the learned Single Judge, the respondents-Union of India & Ors., preferred an appeal (LPASW No.35/2009) and the learned Division Bench of this Court vide judgment dated 13.12.2010 dismissed the appeal, upholding the judgment passed by the learned Single Judge, holding that procedural safeguards have not been complied with, by the authorities while passing the discharge order.
04. Petitioner, for non-compliance of the judgment passed by the learned Single Judge and upheld by the learned Division Bench, moved a representation to the respondents for implementation of the judgment, however, when the judgment was not complied with, the petitioner preferred the instant contempt petition.
05. Pursuant to notice, respondents filed statement of facts, stating therein that the petitioner, in compliance to the judgment, was allowed to join the service in December, 2011, who was superannuated from service on 31.08.2012 on the rank of 'Naik'. On superannuation/retirement of the petitioner, the respondents calculated his arrears of pay and allowances w.e.f. 23.04.2002 (the date of discharge) to 31.12.2011 (till he was permitted to join back in the service) as Rs.12,90,041/- and the said amount was released in his favour. Additionally, an amount of Rs.2,53,969/- was also paid to the petitioner toward compensation in lieu of 'quarter' and 'normal ration allowance'.

06. Petitioner, in view of the statement of facts filed by the respondents, filed a supplementary affidavit admitting that the petitioner had received the afore-stated amounts, but he was not paid arrears on account of 'financial up-gradation', UNIY allowance, interest on the arrears from April, 2002 to December, 2011 and the arrears towards 'Field Allowance/Unit Allowance' to which he was also entitled to.
07. The respondents, in response to the supplementary affidavit filed by the petitioner, filed response/objections stating therein; that Integrated Headquarters of Ministry of Defence (Army) had accorded sanction for grant of arrears of Pay and Allowances amounting to Rs.13,78,222/- for the period from 23.04.2002 (the date of discharge) to 14.12.2011 (the date of re-instatement) in favour of the petitioner and after deduction of AGIF subscription, Transfer Grant and Service Gratuity, an amount of Rs.11,69,092 has been paid to the petitioner; that at the time of MACP up-gradation, an individual should meet the following discipline criteria:
- a) No red ink entry during last one year.
 - b) Not more than one red ink entry during last 5 years.
 - c) Not more than three red ink entries during entire service.

Parent Unit of the petitioner (i.e. 5 JAK LI) has published DO Part II for grant of MACP, which has subsequently been rejected vide Office Letter No.1033/Obsn/5 JAKLI/ER dated 03.10.2012, quoting that the individual not meeting the discipline criteria, having five red ink entries in service, was not entitled for MACP up-gradation as per policy in vogue; that the 'Unit Allowance' is allowed only for the period of physical presence of the petitioner in the Unit, whereas, the petitioner was re-instated in service notionally with effect from 22.04.2002 and physically reported for duties

on 14.12.2011, as such, he was not entitled for 'Unit Allowance' as he had not physically served in the army during that period.

08. While making submissions, Mr. R. K. Gupta, learned senior counsel, appearing for the petitioner has restricted his argument to two points only viz. i) that arrears on account of 'Field Allowance' were not paid to the petitioner; & ii) that arrears on account of 'Financial Up-gradation' as per MACP Scheme were not released in favour of the petitioner by the respondents; that once the 'discharge order' had been quashed by the Court, for the period with effect from 22.04.2002 (the date of discharge) till his joining back into the service on 14.12.2011, the petitioner was deemed to have been in service and posted at Srinagar, which is a 'field station', as such, he was entitled to be granted 'Field Allowance', particularly so, he had been compensated for the 'quarter rent' and the 'ration allowance' as per the statement of facts filed by the respondents. He further argued that the contention of the respondents that in view of the red entries, the petitioner was not entitled to 'Financial up-gradation' under MACP Scheme, is misconceived as the red entries in view of the discharge order having been quashed are deemed to have been erased, as such, the petitioner is also entitled to the relief of 'Financial up-gradation' as per MACP Scheme, regardless of the red entries in his service record and prayed that the respondents be directed to pay arrears on account of 'Field Allowance' and also the 'Financial up-gradation' as per the MACP Scheme for the period, as the petitioner had remained out of service because of the discharge order, which had been quashed with the consequential benefits. Petitioner having been promoted to the post of Naik in April, 1999, had completed more than 13 years on his retirement

in August 2012, as such, he had completed more than 13 years in one rank and was certainly entitled to the relief under MACP Scheme for Up-gradation, on completion of 8 years of service in one cadre of 'Naik'.

09. Mr. Vishal Sharma, learned Dy. SGI, *ex adverso*, argued that on the discharge of the petitioner having been set aside, he was taken back into service in compliance to the judgment and was released all the consequential benefits, to which he was entitled, except the 'Field Allowance' and 'Financial Up-gradation' under MACP Scheme, to which he was found not entitled; that the 'Field Allowance' is admissible to the personnel, who actually served in the field area, as the petitioner had not served in the area and his deemed service at Srinagar Station does not mean that he is entitled to the 'Field Allowance' as is admissible to those personnel, who performed their duties in the field station. He also argued that the petitioner's discharge was quashed as the procedure to order discharge was found not to be followed. Moreover, the red entries had not even been challenged and have attained finality. He submits that as per MACP Scheme, the idea is to remove stagnation after every eight (08) years, if some personnel continues for such period in one rank on completion of 08/16/24 years, but such a relief of up-gradation can be provided to only those personnel, who may not have earned red ink entries. The petitioner in view of Red Ink entries in his service-book, was not entitled to have been granted financial up-gradation, even after completion of more than 8 years in the cadre of 'Naik'.
10. He has finally prayed that the judgment passed by this Court in favour of the petitioner has been fully and finally complied with, reinstating him in the service and by making payment of salary and other admissible

allowances on his superannuation for the entire period of his service and prayed that this contempt petition be settled and the contempt proceedings be dropped.

11. Heard both the counsels at length, perused the record and considered.
12. Vide judgment dated 02.12.2008 passed by this Court in SWP No.324/2003 and upheld by the Division Bench, the impugned order whereby the petitioner had been discharged from service was quashed, with a direction to re-instate him in service with all consequential benefits. It appears and as admitted by learned senior counsel for the petitioner that the petitioner was re-instated and had also been granted all other consequential benefits on his superannuation, except the 'field area allowance' and the 'financial up-gradation' in view of MACP Scheme.
13. The contention of learned Dy.SGI is that since the petitioner had not actually worked at a field area during the period with effect from his discharge till his instatement, as such, not being present in the field area, he is not entitled to the Field/Unit allowance; also that despite recommendation from the Unit to grant 'financial up-gradation' on having completed more than 08 years of service in the cadre of 'Naik', the superior officer had declined the same, on discipline criteria as the petitioner had earned five red ink entries and the 'financial up-gradation' can be granted when there are no such red ink entries.
14. On a consideration of the matter, this Court is of the opinion that the 'Field Allowance' is admissible to the personnel serving in field areas, which are specified so, who may have been present in that period at those notified field stations. Though Srinagar Station has not been disputed to

be a 'field area', however, the petitioner has not been in Srinagar for the period after his discharge till he rejoined consequent upon his reinstatement, as such, he was not entitled to receive the 'field allowance'. It may not be out of place to mention that certain allowances are attached to the salary subject to certain conditions and if those conditions are not satisfied, such allowances are not admissible. The petitioner though was deemed to be in service as per the judgment of the Court, however, being not physically in the field area, he was not entitled to the 'field allowance'. Therefore, the claim of 'field allowance' has been rightly rejected by the respondents. The contention of the learned senior counsel for the petitioner that since the petitioner had been granted 'ration & quarter allowances' for the period and as such, 'field allowance' cannot be denied, seems to be misplaced, as even if those allowances were granted wrongly, should not justify another wrong.

15. The second point for consideration is with regard to 'Financial Up-gradation' in terms of the MACP Scheme. This Scheme had been devised as per recommendation of the 6th Central Pay Commission, providing that the personnel shall be entitled to 'financial up-gradation' at an interval of 08-16-24 years of continuous regular service and was made applicable to all the personnel, below officer rank in the Indian Army, under the Scheme known as Modified Assured Career Progression Scheme (MACPS). MACP Scheme contemplated merely placement on personal basis in the immediate higher Grade Pay/grant of financial benefits only and shall not amount to actual/functional promotion, however, the pay drawn in the pay band and the grade pay allowed under the MACPS was to be taken as the basis for determining the terminal benefits. MACP

Scheme provided allowance benefit of 3% pay fixation on completion of every eight years, in each of the cadres. It appears that as per the Scheme, screening was to be conducted for grant of MACP by a Committee and that the criteria for promotion would be applicable to MACP up-gradation. Discipline criteria made applicable for up-gradation under MACP Scheme provided that an individual must have to meet discipline criteria for promotion laid down and containing, *inter alia*, a) No red ink entry during last one year; b) Not more than one red ink entry during last 5 years; & c) Not more than three red ink entries during entire service.

16. Since the petitioner had been awarded four red ink entries, as such, in view of the discipline criteria, having four red ink entries in his service record, the petitioner was not entitled to financial up-gradation under the MACP Scheme, notified by the Integrated Headquarters of Ministry of Defence (Army) Letter No.B/33513/AG/PS-2(c) dated 10.10.1997.
17. The contention of the learned senior counsel for the petitioner that in view of the quashing of the discharge of the petitioner, the red ink entries are also deemed to have been erased, in my opinion, is not correct understanding of the matter. The red ink entries were not directly in question as the same had not been challenged in the appropriate proceedings and the discharge order was also quashed for not following the due procedure, as such, the red ink entries cannot be deemed to have been erased. Therefore, red ink entries in the service record of the petitioner debarred the petitioner from grant of financial up-gradation under MACP scheme.
18. In view of the foregoing observations, this Court records its satisfaction to the implementation of the judgment by the respondents in letter and spirit,

and the same has been complied with, re-instating the petitioner to his position of Naik wherefrom he was superannuated later and also granted all the consequential benefits including admissible allowances.

19. In the backdrop, the Contempt Petition is, thus, **settled**. Contempt proceedings are dropped.

(M A Chowdhary)
Judge

Jammu
22.07.2025
Narinder

