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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

CWP-29682-2024
Date of Decision: 21.11.2024

Ex. Gnr. Alok RanjanPetitioner

Versus

Union of India and othersRespondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Argued by: Mr. Arvinder Singh, Advocate
for the petitioner.

Ms. Shalini Atri, Sr. Panel Counsel
for the respondent - UOI.

SURESHWAR THAKUR, J.

1. Through the instant writ petition, the petitioner herein prays for the issuance of a writ of Certiorari for setting aside the impugned order dated 14.08.2024 (Annexure P-1), as passed by the learned Armed Forces Tribunal, Regional Bench, Chandigarh whereby the espousal of the petitioner for grant of the benefit of 2nd MACP (Modified Assured Career Progression Scheme) has been declined.

Factual Background

2. The Government had considered the recommendations of the Sixth Central Pay Commission for introduction of Modified Assured Career Progression Scheme (MACPs) and had accepted the same with

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further modification to grant three financial upgradation under MACPs at intervals of 8, 16 and 24 years of continuous regular service.

3. The petitioner was enrolled in the Army on 28.03.2003 in the rank of Sepoy and he completed his 8 years of regular service on 28.03.2011, and was accordingly granted the benefit of 1st financial upgradation (MACP) of the rank of a Naik. Thereafter, the petitioner completed his 16 years of regular service on 28.03.2019. However, the 2nd financial upgradation was denied to the petitioner on the ground that he was promoted to the rank of Naik w.e.f. 01.06.2019, vide part-1 order dated 10.05.2019, but he refused to assume the same and had shown his unwillingness for promotion vide two certificates given by him on 01.07.2019 and on 09.09.2019. The discharge of the petitioner from service took place on 31.03.2020.

4. Feeling aggrieved, the petitioner filed O.A. before the Tribunal concerned. The said O.A. became dismissed vide order dated 14.08.2024. The operative part of the said order is extracted hereinafter.

“..... 5. A perusal of the reply filed on behalf of the respondents shows that the applicant was promoted to the rank of Naik vide Part-1 Order dated 10.05.2019 but he refused to assume the same. Obviously, refusal was in anticipation of benefit of MACP (Havildar), whereby financial benefit would be received without taking on additional responsibilities. Such behaviour is contrary to the ethos of Indian Army. It is also contrary to the aim behind grant of financial upgradation. The benefit of financial upgradation is granted only in cases where a person stagnates in a particular rank for the stipulated period despite his efforts to earn promotion. Keeping this

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in view, the scheme of financial upgradation envisages refusal of grant of benefit if a concerned person is unwilling to be promoted or undergo promotion cadre. If financial upgradation is permitted without the rider aforementioned, it would result in deterioration of standards.

6. *The applicant has refused to assume a higher rank only because he higher financial benefit without added responsibilities. The aim of the policy of financial upgradation is to keep such a tendency in check. Therefore, the submission made by learned counsel for the applicant has to be rejected. Reliance on order dated 20.04.2023 by a Co-ordinate Bench in OA No.1600 of 2020 titled Ex. Sep. Jagesar Shrivias Vs. Union of India and others does not assist the case as the issue regarding submission of unwillingness certificate after the service personnel became eligible for grant of benefit of financial upgradation has not been considered. The case has been decided on the basis of the fact that claim of the applicant therein was already under process....”*

5. Feeling dis-satisfied from the afore dis-affirmative order, the petitioner herein has filed thereagainst the instant writ petition.

Submissions of the learned counsel for the petitioner.

6. At the outset, the learned counsel for the petitioner places reliance upon an order passed by the Armed Forces Tribunal, Regional Bench Kochi, upon, O.A. No. 250 of 2017, wherein a similar question as put forth in the instant writ petition, *as to whether an applicant can be denied the benefits of MACP on the ground that he was unwilling for promotion*, was dealt with in detail. In the said O.A., the Tribunal held

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that the applicants therein were entitled to the benefits under the MACP scheme.

7. Moreover, since the petitioner becomes eligible for 2nd financial upgradation on 28.03.2019 (i.e. on his completion of 16 years of service), whereas, his promotion has come later on 10.05.2019 and that too w.e.f. 01.06.2019, therefore, the petitioner was entitled for 2nd financial upgradation from 28.03.2019.

Submissions of the learned counsel for the respondent.

8. On the other hand, the learned counsel for the respondent- UOI, while making a reference to letter dated 11.07.2018 of the Army Authorities, has submitted that as per policy in vogue, the petitioner rendered unwillingness certificate for further promotion, therefore, he is not entitled for MACP. The relevant para No. 3 of the said letter is extracted hereinafter.

“If a regular promotion has been offered by was refused by the employee before becoming entitled to a financial upgradation, no financial upgradation shall be 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.”

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Inferences of this Court.

9. Since no challenge has been made to the vires of the letter (supra), therebys, the echoings as occur in the said letter are required to be revered.

10. Be that as it may, if evidently the present petitioner rendered his unwillingness for being promoted to the promotional post, therebys, the financial upgradation in terms of the supra letter was to be declined to him.

11. Nonetheless, if financial upgradation was granted to the defence personnel and the endowing of the said benefit arose from obviating stagnation, therebys, even if the defence personnel subsequently refuses promotion, therebys, the earlier granted financial upgradation to the soldier is not required to be withdrawn.

12. Now, coming to the facts at hand. Since, the present petitioner became eligible for the 2nd financial upgradation on 28.03.2019, whereas, he was subsequently offered promotion to the promotional post rather on 10.05.2019 and though the said offer became declined. However, the declining of the offer of promotion made to the present petitioner, does not render him ineligible for the financial upgradation, which was to be endowed to him on 28.03.2019, which is a date prior to the offer of promotion to the promotional post being made to him, and, which he ultimately refused.

13. Though, in the instant case no financial upgradation was allowed to the present petitioner, besides though subsequently the present petitioner refused the offer as made to him to join the

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promotional post, therebys, though the letter (supra) states that there is but a necessity qua the effective allowings of the financial upgradation to the defence personnel, thus to obviate stagnation, whereupon alone the refusal on the part of the defence personnel to accept the promotional offer made to him, rather becoming in-consequential nor it affecting the earlier endowment to him of the effectively made financial upgradation.

14. Now importantly, if a stricto sensu connotation to the letter (supra), is imparted therebys, despite the evident eligibility for the relevant endowment accruing vis-a-vis the defence personnel, yet merely on the premise of the said endowment, rather at the eligible phase, thus becoming not effectively potentialized vis-a-vis him, but would untenably bar him, yet to claim the effective endowment of the financial upgradation to him, upon, his subsequently making refusal to accept the offer of promotion, especially, when the apposite eligibility evidently did occur prior theretos.

15. Emphatically the test is of eligibility, than of actual potentialization. If so, the supra speakings occurring in the letter dated 11.07.2018 are to be read down in favour of the defence personnel to the extent, that if he acquired the apposite eligibility, therebys, he also becomes entitled to seek the apposite endowments being fully potentialized, than the monetary components becoming snatched. More so, when in the intervening period, he would stagnate in the lower rank, whereas, for obviations thereof, the benefit of financial upgradation is

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bestowed upon him, which reiteratedly cannot be snatched, thus merely on the untenable premise supra.

Final Order of this Court.

16. In aftermath, this Court finds merit in the writ petition and with the observation(s) aforesaid, the same is allowed.
17. The impugned order, as passed by the Tribunal concerned is quashed and set aside.
18. The respondent concerned is directed to grant the 2nd financial upgradation to the petitioner, from the date when it accrued to him and accordingly re-fix qua him the financial emoluments subsequent to his discharge from service.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

21.11.2024
kavneet singh

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No