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WP No. 5149 of 2024



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.06.2025
PRONOUNCED ON : 24 .07.2025

CORAM

THE HONOURABLE MRS JUSTICE J. NISHA BANU
AND
THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

WP No. 5149 of 2024

A.Velmurugan
Ex- Sub Maj/ Clk (sd) No. Jc- 3096631 ,
S/o. Late. K.Alagarsamy,
Chempatti- Village And Post,
Aruppukkottai- Taluk ,
Virudunagar District,
Tamil Nadu 626 101.

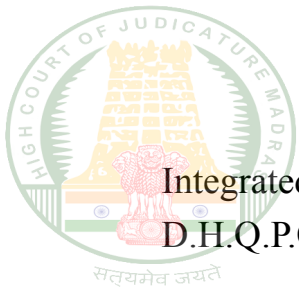
Petitioner(s)

Vs

1. Union Of India,
Rep. By The Secretary to Ministry of Defence,
D.H.Q.P.O.South Block,
New Delhi 110 011.

2.The Chief of Army Staff,
Caos, Secretariat, South Block,
Army Head Quarters, D.H.Q.P.O.South Block,
New Delhi 110 011.

3.The Additional Directorate General Personal Services,
Adjutant Generals Branch,
A Wing Sena Bhavan,



Integrated Headquarters Of Mod (Army) ,
D.H.Q.P.O., New Delhi 110 011.

4.Principal Controller of Defence Accounts (Pension)

Draupathighat, Allahabad,
Uttar Pradesh, Pin 201 014.

5.Officer- In - Charge, Records And Commandant,
The Madras Engineer Group,
Pin 900 493, C/o 56 APO.

6.Pay Accounts Office (other Ranks)
Madras Engineer Group And Centre,
Old Madras Road, Bengaluru 560 042.

Respondent(s)

PRAYER: This Writ Petition has been filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order dated 11.09.2023 in O.A. No. 74 of 2022 passed by the Honble Armed Forces Tribunal, Regional Bench, Chennai quash the same as illegal and arbitrary and consequently direct the respondents herein to grant the petitioner with financial upgradation / stepping up under MACPS (MACP NB SUB) by fixing his basic pay with effect from 17.12.2006 by considering the date of issuance of promotion order to the rank of Havildar, i.e. 17.12.1998 as provided vide Records MEG Promotion Order No. C/ 30/ CA2 (C) of 1998 dated 17.12.1998 and ensure the Most Beneficial Option in accordance with SAI 1/ S/ 2008 dated 11.10.2008 and 1.02.2009 implemented in August 2018 retrospectively w.e.f. 01.01.2006 and all consequent and subsequent monetary benefits and arrears with interest.

For Petitioner(s): Dr. S.Diraviam Dinesh
For Respondent(s): Dr.D.Simon CGSC
For R1 And R5

**ORDER****(Order of the Court was made by M.Jothiraman J)**

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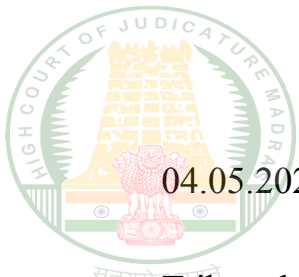
Assailing the impugned order dated 11.09.2023 in O.A. No. 74 of 2022 passed by the Hon'ble Armed Forces Tribunal, Regional Bench, Chennai, the petitioner has filed the present writ petition.

2. The case of the petitioner is that the petitioner was recruited in the Indian Army on 22.02.1991 and discharged from service on 31.01.2022. After rendering 30 years 11 months of service under Army Rule 13(3), Item I(i)(a). PPO was issued for service pension w.e.f. 01.02.2022. The petitioner was promoted to the rank of Havildar along with 180 individuals including his seniors, batchmates and junior, duly approved w.e.f. 01.12.1998 retrospectively vide promotion order No.C/30/CA2(C) of 1998 dated 17.12.1998. The petitioner has received promotion order only on 21.02.1999, after rejoining his parent unit from annual leave and the petitioner assumed the rank of Havildar on 22.02.1999. The petitioner's junior colleagues assumed the rank of Havildar, prior to issuance of promotion order dated 17.12.1998. MACP scheme came



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into operation w.e.f. 01.09.2008. The 180 individuals approved for promotion to Havildar were granted financial upgradation w.e.f. 01.09.2008 along with 3% increment in total pay including grade pay of Rs.4200/- with the date of next increment on 01.07.2009 under MACP scheme. Subsequently, as per amendment vide letter dated 10.08.2018, MACP scheme came into operation w.e.f. 01.01.2006. Accordingly, those colleagues juniors to the petitioner were granted financial upgradation on completion of eight years of service in the rank of Havildar, having taking into account the date of physical assumption in the promoted position, instead of the date of promotion order dated 17.12.1998. Consequently, their basic pay was fixed at Rs.9,300/- with next date of increment on 01.07.2007. Whereas, in the case of the petitioner, the basic pay was fixed at Rs.9,300/- on 01.07.2008 vide order No.1/06-0/219/2018 dated 11.09.2018. This occurred due to the failure of the parent unit to intimate the records details of promotion order dated 17.12.1998 and no fault lies on the part of the petitioner. The petitioner made a representation dated 29.11.2021 but the same was not considered. The 6th respondent/Pay and Accounts Office was closed the pensionary benefits, arbitrarily, vide impugned order dated



04.05.2022. The said impugned order challenged before the Armed Forces,

Tribunal, Regional Branch in OA. No.74/2022 and the same was dismissed by

the Tribunal. Aggrieved over the same, the present writ petition has been filed. .

3. The Tribunal finds that, it is not disputed that the petitioner was granted third financial up-gradation as Subedar Major under MACP w.e.f. 31.01.2018. The petitioner's name was included in the promotion order dated 17.12.1998 to the rank of Havildar along with 180 individuals. The petitioner physically assumed the rank of Havildar on 22.02.1999 and on completion of eight years of continuous service in the said rank, the third financial up-gradation under MACP was granted w.e.f. 22.02.2007 whereas his junior vide promotion order dated 17.12.1998 were promoted w.e.f. 18.12.2006. Subsequently, the petitioner was promoted to Naib Subedar on 01.12.2010. The petitioner was physically assumed the rank of Havildar on 22.02.1999 which is the date of applicable of financial benefit as per extant policy. The petitioner's plea for considering promotion seniority on 01.12.1998 which is the promotion seniority for promotion in the normal course for MACP benefits, is not



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sustainable. The issue of stepping up of pay under MACP scheme, it is amply clear vide para Nos.9 and 15 of administrative instructions letter dated 13.06.2011 that no stepping up of pay in the band and grade pay would be admissible with regard to the junior getting more pay than the senior on account of pay fixation under the MACP scheme. The petitioner's plea for considering date of promotion, seniority instead of physical assumption of rank of Havildar is in violation of extant provisions and is clearly not sustainable.

4. The learned counsel appearing for the petitioner submitted that the respondents have not considered the third respondent/Additional Director General (personal services) circular dated 17.03.2022 for implementation of the option towards the most beneficial fixation of pay. The respondents did not take into account of disparity in fixation of the basic pay for the petitioner on par with his junior colleagues that was artificially created on account of delay in communication of the promotion order dated 17.12.1998. An account of an administrative lapse, committed by the petitioner's parent unit by not intimating the about records (MEG) promotion order dated 17.12.1998. The petitioner is in



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deprivation of his lawful entitlement. As para No.9 of AG branch administrative section dated 13.06.2011, stepping up of pay in the payband or grade pay as admissible regarding juniors drawing more pay than seniors under MACP have been denied, which is not justifiable. The respondent did not consider the option of granting financial upgradation under MACP with effect from 17.12.2006 instead of 22.02.2007 i.e. on completion of eight years of service in the rank of Havildar from the date of his promotion as approved by the 5th respondent/office in charge, Records and Commandant. The respondents have failed to consider the action to elect his scale of pay since the financial upgradation under MACP was implemented in the year 2018 retrospectively. The 6th respondent/Pay and Account office, has failed to consider and ignored the fact that administrative lapse of none intimation and the records of the promotion order dated 17.12.1998. To strengthen his contentions, the learned counsel has relied upon the judgment of the Hon'ble Supreme Court reported in ***1997 3 SCC 176 in the case of Union of India and others Vs P.Jagdish and others***, to show that under the provisions of fundamental rules to remove the anomaly of Government servant promoted or appointed to a higher post earlier



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drawing a lower rate of pay in that post than another government servant junior to him in the lower grade and appointed subsequently to the higher post, the principle of stepping up of the pay is applied. The learned counsel has relied upon the judgment of the Hon'ble Supreme Court reported in 2006 12 Scale 440 *in the case of Commissioner and Secretary to Government of Haryana and others Vs. Ram Sarup Ganda and others*, to show that in case of pay anomaly, if the employee who, on fixation of ACP scales, are in receipt of lesser salary than their juniors in the same cadre/post, then their salary shall be stepped up accordingly. The learned counsel has relied on another order of the Armed Force Tribunal, Lucknow Branch, in O.A.No.569/2021 dated 23.02.2022.

5. Per contra, the learned counsel for the respondents would submit that the policy for grant of modified assured career progression issued vide integrated headquarters of Ministry of Defence letter dated 13.06.2011 and amended vide letter dated 10.08.2018 categorically provides that for the grant of benefits of MACP scheme, the soldier needs to put in 8,16 and 24 years of physical service. The original application of the petitioner was not only belated



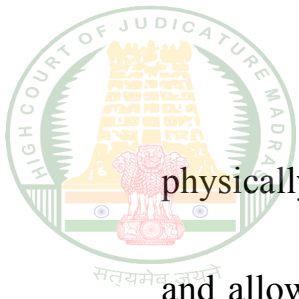
but also an after thought. The order passed by the Armed Tribunal is well reasoned order and there is no need to interfered with.

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6. Heard the learned counsel appearing on either side and perused the materials available on record.

7. The writ petitioner was enrolled in the Indian Army on 22.02.1991 and he was promoted to the rank of Naik on 01.04.1997 and Havildar on 22.02.1999. He was granted MACP-3 (Naib Subedar) grade on 01.12.2010. He was promoted to the rank of Subedar on 01.10.2014 and subedar Major on 30.01.2018. The petitioner was discharged from the service on 31.01.2022 in the rank of Subedar Major, on completion of terms of engagement/tenure under Army Rule 13(3) item I(i)(a) of 1954.

8. The writ petitioner, while service with Engineer Regiment was issued promotion order to the rank of Havildar dated 17.12.1998 with the seniority as 01.12.1998. The petitioner was on leave from 15.12.1998 to 20.12.1998. He was



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physically assumed the rank of Havildar on 22.02.1999. Accordingly, his pay and allowance of Havildar rank were paid w.e.f. 22.02.1999 that is the date of assumption of office. As per the Army Instructions Nos.84 – 88 dated 04.05.1968, in which, part-I, ACTING Ranks, deals with the following of the general provisions governing the promotions, Rule 84, speaks about for promotion for junior commissioned officers and other ranks, promotion will be of two kinds viz., a) Acting, b) Substantive. It is relevant to cite Rule 84(2)(d) and (e), which reads as follows:

"(d) Acting rank will be granted from the day the vacancy occurs provided that the individual has assumed the duties of the higher rank from that day and conversion will take place with effects from the day the individual ceases to perform the duties of the appointment for which acting rank is granted or the vacancy ceases to exist except as provides otherwise.

(e). On casual, annual or accumulated annual leave

(i) On casual leave

An individual will retain paid acting rank or paid lance appointment during the period of casual leave and no acting promotion will be permissible in his place. Acting rank will, however,



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except when the period of casual leave and its overstayed is regularised against casual leave entitlement for the year in which casual leave as taken and as Special Leave vide Rule 6(d)(ii) of leave refer for the services, Vol. I – Army cases of overstayal of casual leave owing to sickness will be dealt with as in clause (g)(ii) below".

9. It is to be noted that the writ petitioner's seniority for next promotion was promoted as per policy by giving Anti-date seniority with effect of pay and allowance from 01.12.1998. He was granted MACP-3 w.e.f. 22.02.2007 I.e. 8 years after physical assumption of promotion (havildar) in terms of para 8 integrated headquarters of Ministry of Defence, letter dated 13.06.2011 amended vide integrated headquarters of Ministry of Defence dated 10.08.2018.

10. It is also to be noted that, as per para-8 integrated headquarters, Ministry of defence letter dated 13.06.2011 refers 8, 16 and 24 years of service or continuous 8 service from the last promotion which is earlier, is mandatory for grant of financial upgradation under MACP scheme. In accordance with the said policy, the petitioner physically assumed the rank of Havildar on



22.02.1999 and he has completed 8 year of continuous service in the rank of

Havildar on 22.02.2007. Accordingly, third financial up-gradation (Naib

Subedar grade) under MACP scheme was granted to him w.e.f. 22.02.2007.

11. It is an admitted fact that the MACP scheme came into operation w.e.f. 01.09.2008. The effective date of the scheme was further amended with effect from 01.01.2006 as per integrated headquarters of Ministry of Defence letter dated 10.08.2018. In accordance to the said policy, the petitioner physically assumed the rank of Havildar on 22.02.1999 and completed eight years of continuous service in the rank of Havildar on 22.02.2007. This has been upheld by the Pay and Accounts officer, who is the competent authority for fixing basic pay for armed forces vide letter dated 04.05.2022. The writ petitioner was enrolled on 22.02.1991 and he has completed 24 years continuous service on 22.02.2015. He has completed continuously 8 years of service in the rank of Havildar on 22.02.2007. Under these aspect, the petitioner is not eligible for MACP scheme in (naik subedar grade) on 01.01.2006. According to the respondent, the stepping up of pay is not applicable in case of



Web Copy juniors getting more pay due to MACP scheme vide integrated headquarters

Ministry of Defence letter dated 13.06.2011. The petitioner has raised two issues, one is an option for fixation and other is MACP. Both these issues are not same.

12. Admittedly, there is no option available with any individual for option of MACP scheme. In the counter affidavit filed by the respondents wherein it has been stated that as far as his non intimation of promotion order cannot be commented upon as records the Madras Engineer Group does not have any proof of non-intimation of his promotion. It is relevant to refer with regard to administrative instructions, issued, to grant of MACP as granted by the Government, consequent to VI the CPC., instructions 9 and 15, which reads hereunder:

9. Stepping up of pay: No stepping up of pay in the pay band of grade pay would be admissible with regard to junior getting more pay than the senior on account of pay fixation under MACP Scheme.

15. Financial up gradation under the MACPs shall be purely personal to the PBOR and shall have no relevance to his seniority



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position. As such, there shall be no additional financial upgradation for the senior PBOR on the ground that the junior PBOR in the grade has got higher pay grade pay under the MACPs.

13. As far as Nos.9 and 15 of the administrative instructions for grant of MACP vide B/33513/ACP/AG/PS-2(c), dated 13.06.2011 that no stepping up of pay in the pay band and grand pay would be admissible with regard to junior getting more pay than the senior on account of pay fixation under the MACP scheme.

14. The Tribunal had adequately appreciated the factual matrix along with relevant rules, regulations and policies and finds that the writ petitioner physically assumed that the rank of Havildar on 22.02.1999 which is the date of applicable of financial benefits as per extant policy and the plea for promotion, seniority of 01.12.1998, which is the promotion seniority for promotion in the normal course for MACP benefits is not sustainable. The writ petitioner had physically assumed the rank of Havildar on 22.02.1999 and completed 8 years of continuous service in the rank of Havildhar on 22.02.2007. Since, the third



financial upgradation (Naib Subedar grade) under MACP scheme was granted to the petitioner with effect from 22.02.2007 and re-fixation of pay with effect from 01.12.2006, stepping up of pay is not applicable to the petitioner, as per the rules and regulations. In the light of the above discussions, we do not find any reasons to interfere with the order impugned and the writ petition is lack of merits and the same is liable to be dismissed.

15. Accordingly, the writ petition is dismissed. No costs.

(J. NISHA BANU,J.) (M.JOTHIRAMAN,J.)

24-07-2025

rli

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

To

1.Union Of India

Rep. By The Secretary To Ministry Of
Defence, D.H.Q.P.O.South Block,
New Delhi 110 011.



2.The Chief Of Army Staff

Caos, Secretariat, South Block, Army
Head Quarters, D.H.Q.P.O.South
Block, New Delhi 110 011.

3.Additional Directorate General

Personal Services

Adjutant Generals Branch, A Wing
Sena Bhavan, Integrated Headquarters
Of Mod(army) , D.H.Q.P.O.,
New Delhi 110 011.

4.Principal Controller Of Defence

Accounts

(Pension) Draupathighat, Allahabad,
Uttar Pradesh, Pin 201 014

5.Officer- In - Charge, Records And
Commandant

The Madras Engineer Group, Pin 900
493 C/o 56 Apo

6.Pay Accounts Office (other Ranks)

Madras Engineer Group And Centre,
Old Madras Road, Bengaluru 560 042



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