



2026:DHC:3401-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of Decision: 23.04.2026*+ **W.P.(C) 1252/2026 & CM APPL. 6211/2026**

UNION OF INDIA AND ORS

.....Petitioners

Through: Col. Ashish Chaddha
DGAFMS with Major Kanika
Sharma, Army.

versus

NR 19127X COL R PADMA HEPSIBARespondent

Through: Mr. Indra Sen Singh & Ms.
Kaberi Sharma, Advts.**CORAM:****HON'BLE MR. JUSTICE ANIL KSHETARPAL****HON'BLE MR. JUSTICE AMIT MAHAJAN****J U D G M E N T (O R A L)****AMIT MAHAJAN, J.**

1. The present petition is filed assailing the order dated 12.09.2025 (hereinafter '**impugned order**') passed by the Hon'ble Armed Forces Tribunal, Principal Bench, New Delhi in O.A. No. 492 of 2024, whereby, the Original Application filed by the Respondent herein was allowed.

2. Succinctly stated, the Respondent was commissioned in the Military Nursing Service (MNS) on 29.12.1987. She was considered for promotion to the rank of Brigadier by the Promotion Board (AFMS) No.2 as a fresh case in January 2023 and thereafter as a first review case in October 2023; on both occasions, she was found 'not empanelled'. Aggrieved by her non-empanelment by Promotion Board



(AFMS) No. 2 in January 2023, the Respondent submitted a statutory complaint dated 28.02.2023, which came to be rejected by the competent authority vide MoD letter dated 26.09.2023. Subsequently, upon again being found 'not empanelled' in October 2023 as a first review case, she submitted a further statutory complaint dated 20.12.2023. Being aggrieved by her continued non-empanelment and the delay in disposal of her second statutory complaint, the Respondent approached the learned Tribunal.

3. The learned Tribunal noted that while the Respondent's Confidential Reports (CRs) consistently reflected gradings above 8.80, the Interim CR for the period 01.01.2020 to 12.09.2020 reflected a significantly lower average grading of approximately 8.62. This deviation was held to be a clear aberration, which warranted interference of the learned Tribunal. In view of the same, the learned Tribunal passed the following directions:

- “(a) The Interim CR for the period 01.01.2020 - 12.09.2020 is hereby set aside on the ground of inconsistency.
(b) The applicant shall be reconsidered for promotion to the rank of Brigadier as a Special Review Case by a duly constituted Promotion Board No. 2, in accordance with the extant policy, within a period of three months from the date of this order.
(c) The retirement order issued to the applicant vide letter dated 30.04.2025 shall be subject to the outcome of the said Special Review Board.”*

4. The learned Counsel for the Petitioner submits that the learned Tribunal erred in treating an isolated variation in the Confidential Report of the Respondent as an 'inconsistency'. He submits that a Confidential Report is not a cumulative assessment of an officer's tenure of service, instead it is a specific evaluation of an officer's



performance during a particular period and it is natural for variations to occur across different Confidential Reports.

5. He submits that in absence of any findings on *mala fide* intention, bias or violation of laid down procedure in the reporting process or in the conduct of the Selection Board, interference by the learned Tribunal with the Confidential Report and the consequent promotion prospects is unwarranted.

6. *Per Contra*, the learned Counsel for the Respondent submits that the impugned order does not suffer from any infirmity, and does not warrant interference of this Court.

7. We have heard the Counsel and perused the record.

8. At the outset, it is apposite to mention that while exercising jurisdiction under Article 226 of the Constitution of India, this Court does not sit in appeal over the orders passed by the Tribunal. The scope of judicial review is limited to examining the decision-making process and not the correctness of the decision on merits. Unless the impugned order suffers from perversity, patent illegality, violation of principles of natural justice, or lack of jurisdiction, interference by the writ court is not warranted. Re-appreciation of the merits or substitution of the Tribunal's view with another plausible view is impermissible. Reference is drawn to the judgment in *Syed Yakoob v K.S. Radhakrishnan* : 1963 SCC OnLine SC 24 where the Hon'ble Apex Court held as under:

"7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or



tribunals : these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or properly, as for instance, it decides a question without giving an opportunity, be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised (vide Hari Vishnu Kamath v. Syed Ahmad Ishaque1 Nagandra Nath Bora v. Commissioner of Hills Division and Appeals Assam and Kaushalya Devi v. Bachittar Singh

8. It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; hut it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious misinterpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said



conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it is neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been misconstrued or contravened.”

9. Adverting to the facts of the present case, the principal grievance of the Respondent pertained to her Confidential Reports (CRs) for the periods 01.07.2019 to 31.12.2019 and 01.01.2020 to 12.09.2020. It was contended before the learned Tribunal that the said CRs were improperly initiated by the Reviewing Officer (RO) acting in the capacity of the Initiating Officer (IO) without due and valid sanction. It was further alleged that the gradings awarded therein were unjustifiably low, thereby adversely impacting the Respondent's quantified merit and, consequently, her prospects of promotion.

10. The learned Tribunal observed that the initiation of the CRs for the years 2019 and 2020 had, in fact, been duly sanctioned by the Senior Reviewing Officer (SRO). However, it was further noted that, while the absence of an IO did not occasion any procedural prejudice



to the Respondent in respect of the CR for 2019, inasmuch as the SRO's higher grading of 9.0 effectively neutralised the RO's grading of 8.5, the position was materially different in respect of the CR for 2020. In the latter, the RO assessed the Respondent at 8.50, and the SRO awarded a grading of only 8.75, resulting in a reduced average of 8.62.

11. A perusal of the Respondent's CR record reveals that she consistently secured gradings above 8.80. However, the Interim CR for the period 01.01.2020 to 12.09.2020 reflects a significantly lower average grading of 8.62. Furthermore, the subsequent CRs for the years 2021 to 2023 indicate gradings in the range of 8.90 to 9.00. This marked deviation, when contrasted with both the preceding and succeeding CRs evidencing consistently higher gradings, was rightly held by the learned Tribunal as a clear aberration.

12. The learned Tribunal after considering the material of the service record of the Respondent was of the opinion that the inconsistency in the interim CR of the Respondent, for the period from 01.01.2020 to 12.09.2020, coupled with the organizational constraints arising from absence of an Initiating Officer warranted interference.

13. In view of the above, it is evident that the learned Tribunal has undertaken a reasoned appraisal of the material on record and its conclusion that the interim CR for the period 01.01.2020 to 12.09.2020 constituted an aberration meriting correction is a plausible and well-founded view based on the facts of the case. This Court in judicial review cannot sit as an Appellate Court over the findings arrived at by the specialized Tribunal and substitute its own view.



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14. In the opinion of this Court, the impugned order does not suffer from any perversity, patent illegality, violation of principles of natural justice, or lack of jurisdiction. Hence, no interference is warranted in the impugned order in exercise of extraordinary Writ jurisdiction.

15. The present petition is dismissed. Pending application also stands disposed of.

AMIT MAHAJAN, J.

ANIL KSHETARPAL, J.

APRIL 23, 2026

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