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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 10012/2025, CM APPL. 41664/2025 & CM APPL. 41665/2025

UNION OF INDIA & ORS. .....Petitioners
Through: Mr. Syed Abdul Haseeb, CGSC.

versus

BHOJ RAJ SINGH (EX JWO) .....Respondent
Through:

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE AJAY DIGPAUL

JUDGMENT (ORAL)

% 16.07.2025

C. HARI SHANKAR, J.

1. This petition assails order dated 22 May 2023 passed by the Armed Forces Tribunal[1] in OA 1456/2019 whereby the respondent's application for grant of disability pension on the ground that he suffers from Diabetes Mellitus Type-II[2] has been allowed by the AFT relying on the judgment of the Supreme Court in ***Dharamvir Singh v UOI***[3].

2. The issue is covered by a recent decision rendered by us in ***UOI v Ex Sub Gawas Anil Madso***[4].

[1] "the AFT", hereinafter
[2] "DM-II", hereinafter
[3] **(2013) 7 SCC 316**
[4] **2025 SCC OnLine Del 2018**

3. Nonetheless, we have heard Mr. Syed Abdul Haseeb, learned Central Government Standing Counsel for the petitioners, and have perused the record.

4. The respondent was released in Low Medical Category on his being found to be suffering from DM-II. From the record, including the proceedings of the Release Medical Board[5], the following facts emerged:

(i) The respondent had served in the Indian Air Force for over 23 years and 17 days before he was diagnosed as suffering from DM-II.

(ii) The respondent, in his self-declaration, specifically declared that he had not been suffering from DM-II prior to joining the Indian Air Force. The declaration reads thus:

> 3. Did you suffer from any disability before joining the Armed Forces? If so give details and dates: **NO**

The correctness of this declaration is not doubted either by the RMB or by the petitioner before the AFT or before this Court.

(iii) The reason regarding the DM-II suffered by the respondent has not been attributable to military service, as entered by the RMB reads thus:

[5] "RMB", hereinafter

> "DIABETES MELLITUS: Onset of disability Apr 2012 (Guwahati) at peace station. There was no delay in diagnosis and proper treatment resulting in worsening and disability did not arose in close time relationship to service out of infection, trauma, post-surgery and post-drug therapy. Hence neither attributable to nor aggravated by service as per Para 26 of chapter VI of GMO (Mil Pen) 2008."

(iv) We have already held, in our judgment in ***Gawas Anil Madso***, that where the applicant was not suffering from the ailment at the time of entry into service, the RMB is required to positively identify the cause for the ailment, to justify a finding that it is not attributable to military service.

(v) Regarding para 26 of the Chapter VI of the GMO 2008, we have, in our judgment in ***UOI v EX MWO HFO Bharat Tiwari***[6], observed thus:

> "11. Para 26 of the Chapter VI of the GMO 2008, vivisected into its individual components, specifies that, while dealing with diabetes mellitus:
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> (i) DM is a metabolic disease,
>
> (ii) DM is characterised by hyperglycaemia,
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> (iii) DM is of two types, Type I and Type II with the physiological and pathological reason for the arising of the disease,
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> (iv) Secondary diabetes is stated to be also attributable to drugs or trauma to pancreas or brain surgery or otherwise, as well as to diseases of the pituitary, thyroid and adrenal gland,
>
> (v) DM Type II would be conceded aggravated if onset occurs serving in Fields/CIOPS/HAA and prolonged afloat

[6] **2025 SCC OnLine Del 2358**

service, and
(vi) Diabetes secondary to chronic pancreatitis due to alcohol dependence and gestational diabetes should not be considered attributable to service."

(vi) The RMB has certified the respondent as suffering from 20% disability on account of DM-II, lifelong.

(vii) We have also seen the opinion of the medical specialist, which has been annexed in the writ petition. That opinion, too, does not state at any point that the DM Type II from which the respondent was suffering was not attributable to military service.

5. Thus, we find that even the specialist who examined the respondent did not arrive at any conclusion that the DM-II from which the respondent suffered was not attributable to military service.

6. In such circumstances, we have held in our decision in ***Ex Sub Gawas Anil Madso*** that the respondent would be entitled to disability pension.

7. We do not deem it necessary to reproduce our findings in the said decision, so as not to burden this judgment.

8. We have also been conscious of the fact that we are exercising certiorari jurisdiction over the decision of the AFT and are not sitting in appeal over the said decision.

9. The parameters of *certiorari* jurisdiction are delineated in the following passages of ***Syed Yakoob v K.S. Radhakrishnan***[7]**:**

> "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 Ishaque***[8]***, Nagandra Nath Bora v***

[7] **(1963) SSC OnLine SC 24**
[8] **(1955) 1 SCR 1104**

Commissioner of Hills Division and Appeals Assam[9] *and* ***Kaushalya Devi v Bachittar Singh***[10].

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 mis-interpretation 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."

(Emphasis supplied)

10. Within the limited parameters of the certiorari jurisdiction and keeping in view the facts of the case outlined hereinabove, we find no cause to interfere with the impugned judgment of the AFT, which is affirmed in its entirety.

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[9] **(1958) SCR 1240**
[10] **AIR 1960 SC 1168**

11. In addition, we find that our view stands fortified by paras 45.1, 46 and 47 of the judgment of the Supreme Court, rendered on 23 April 2025 in ***Bijender Singh v UOI***[11], which may be reproduced thus:

> "45.1. Thus, this Court held that essence of the Rules is that a member of the armed forces is presumed to be in sound physical and mental condition at the time of his entry into the service if there is no note or record to the contrary made at the time of such entry. In the event of subsequent discharge from service on medical ground, any deterioration in health would be presumed to be due to military service. The burden would be on the employer to rebut the presumption that the disability suffered by the member was neither attributable to nor aggravated by military service. If the Medical Board is of the opinion that the disease suffered by the member could not have been detected at the time of entry into service, the Medical Board has to give reasons for saying so. This Court highlighted that the provision for payment of disability pension is a beneficial one which ought to be interpreted liberally. A soldier cannot be asked to prove that the disease was contracted by him on account of military service or was aggravated by the same. The very fact that upon proper physical and other tests, the member was found fit to serve in the army would give rise to a presumption that he was disease free at the time of his entry into service. For the employer to say that such a disease was neither attributable to nor aggravated by military service, the least that is required to be done is to furnish reasons for taking such a view.
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> 46. Referring back to the impugned order dated 26.02.2016, we find that the Tribunal simply went by the remarks of the Invaliding Medical Board and Re-Survey Medical Boards to hold that since the disability of the appellant was less than 20%, he would not be entitled to the disability element of the disability pension. Tribunal did not examine the issue as to whether the disability was attributable to or aggravated by military service. In the instant case neither has it been mentioned by the Invaliding Medical Board nor by the Re-Survey Medical Boards that the disease for which the appellant was invalided out of service could not be detected at the time of entry into military service. As a matter of fact, the Invaliding Medical Board was quite categorical that no disability of the appellant existed before entering service. As would be evident from the aforesaid decisions of this Court, the law has by now crystalized that if there is no note or report of the Medical Board at the time of entry into service that the member suffered from any

[11] **2025 SCC OnLine SC 895**

> particular disease, the presumption would be that the member got afflicted by the said disease because of military service. Therefore the burden of proving that the disease is not attributable to or aggravated by military service rest entirely on the employer. Further, any disease or disability for which a member of the armed forces is invalided out of service would have to be assumed to be above 20% and attract grant of 50% disability pension.
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> 47. Thus having regard to the discussions made above, we are of the considered view that the impugned orders of the Tribunal are wholly unsustainable in law. That being the position, impugned orders dated 22.01.2018 and 26.02.2016 are hereby set aside. Consequently, respondents are directed to grant the disability element of disability pension to the appellant at the rate of 50% with effect from 01.01.1996 onwards for life. The arrears shall carry interest at the rate of 6% per annum till payment. The above directions shall be carried out by the respondents within three months from today."

12. The present petition is, accordingly, dismissed in *limine* on delay as well as on merits.

13. Compliance with the impugned judgment of the AFT, if not already ensured, be ensured within a period of four weeks from today.

C.HARI SHANKAR, J.

AJAY DIGPAUL, J.

JULY 16, 2025/*AS*