$~6

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

\+ W.P.(C) 3933/2025, CM APPL. 18365/2025 & CM APPL. 18366/2025

UNION OF INDIA & ORS. .....Petitioners

Through: Mr. Santosh Kumar Pandey, Adv.

versus

EX JWO NAGESHWAR TIWARI .....Respondent

Through: Mr. Bijendra Kumar Pathak, Adv.

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

JUDGMENT (ORAL)

% 23.04.2025

C. HARI SHANKAR, J.

1. This petition assails order dated 27 September 2023 passed by the Armed Forces Tribunal[1] in OA 1674/2022 whereby the respondent's application for grant of disability pension on the ground that he suffers from Diabetes Mellitus Type-II[2] and Primary Hypertension with composite 40% disability have been allowed by the AFT.

2. The issue is covered by a recent decision rendered by us in ***UOI***

[1] "the AFT", hereinafter
[2] "DM-II", hereinafter

v Ex Sub Gawas Anil Madso[3].

3. Nonetheless, we have heard Mr. Santosh Kumar Pandey, learned 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 and Primary Hypertension. From the record, including the proceedings of the Release Medical Board[4], the following facts emerged:

(i) The respondent had served in the Indian Air Force for over 33 years and 1 day before he was diagnosed as suffering from DM-II and Primary Hypertension.

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

> 2(a). 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 petitioners before the AFT or before this Court.

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

[3] **2025 SCC OnLine Del 2018**
[4] "RMB", hereinafter

thus:

> "DM TYPE-II (Old) ICD No. E11.0, Z09.0: A metabolic disorder. Onset in peace station. No delay in diagnosis and proper treatment, no close time association with stress and strain of military service in Field/CI Ops/HAA. Hence conceded neither attributable nor aggravated by service as per para 26 of GMO 2008.
>
> Primary HTN (Old) ICD 110, Z09.0: A metabolic disorder. Onset in peace station. No delay in diagnosis and proper treatment, no close time association with stress and strain of military service in Field/CI Ops/HAA. Hence conceded neither attributable nor aggravated by service as per para 26 of GMO 2008."

(iv) The Commanding Officer's certificate specifically states that the respondent was not responsible, owing to any act or omission of his, for the ailment from which he was suffering. The entry in that regard reads as under:

2. (a) Was the disease/disability attributable to the individua's own negligence or misconduct? If yes, in what way?) **NO, N/A**

(v) The RMB has certified the respondent as suffering from composite 40% disability on account of DM-II and Primary Hypertension, life long.

(vi) We have also seen the report of the specialist consultant who had examined the respondent. The report reads as under:

In lieu of AFMSF-7A

CONFIDENTIAL

MEDICAL CASE SHEET HQTC (U) AF

Name: N Tiwari Ser No: 718734-F Rank: JWO
Unit: HQ TC, IAF Air Force Trade: RTO Age: 51 Yrs

Total Service: 31 yrs

DISABILITIES	DATE OF ONSET	MED.CAT.	MED BOARD DUE
(i) DM Type-II (Old) ICD No. E11, Z.09.0	March 13/Pune	A4G2 (P) 11 Sep2020	11 Sep 2021
(ii) Primary Hypertension ICD No. 1.10.0, Z.09.0	Oct 16/Bangalore	A4G2 (P) 11 S 2020	11 Sep 2021

Complains of : No fresh complains

Treatment : (i) Tab Ramipril 5 mg BD
(ii) Tab Atorvas 20 mg HS
(iii) Tab Metformin 1gm+ Sitagliptine 50 mg BD
(iv) Tab Canagliflozin 100 mg OD
(v) Tab Amlodipine 5 mg HS
(vi) Tab Metoprolol XL 25 mg 00

Past Medical/Surgical History : As Above
Family History : Nil relevant
Personal History : Alcohol- Nil
Tobacco: Nil

On Examination: GC Good Height 165 Cms, Weight 76 kg, [BW 62 kgs, Waist 97 Cms, Hip 103 Cms, BMI 27,18 Kg/m2, WHR 0.94, Over weight- < 2SD, Pulse 74 per min regular. BP-104/66 mm of Hg. Chest 92 cms, Exp: 05 cms
EYE:

DV	R	L	NV	R	L
Without Glass	6/6	6/6	Without Glass	N6	N6
With Glass	-	-	With Glass	-	-
Hearing	R	600CMS	L	600 cms	

Systemic Exam: Resp: Both lungs clinically clear.
CVS: S I, S2 Heard. No S3,S3, Murmur
CNS: No Neurological Deficit
PIA: Soft No OrganomegaJy

Local Examination:- N/A
Inv: Hb% 15.1, TLC-9000, DLC N 62 E 04 B 00, L 32 M 02 Urine RE/ME NAD, Sugar F-100 mg/dl, PP-168 mg/dl, Lipid Profile CH -112 mg/dl, TGL- 148 mg/dl, LDL 33.8 mg/dl, Bun-10.1 mg/dl, S Creatinine: 0.80 mg/dl, Total Bil.-0.84 mg/dl, Direct Bil.-0.18mg/dl Hb A 1 c: 6.9%.
ECG (R): TCU/474/21 dated 11 Jan 21-WNL, Fundoscopy: dated 4 Jan 21- BE WNL

Referred to Med OPD at CH AF 'B' for Release Medical Board opinion.

Date: 12 Jan 2021

5. Thus, we find that even the specialist who examined the respondent did not arrive at any conclusion that the DM-II and Primary Hypertension 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***[5]**:**

[5] **1963 SSC OnLine SC 24**

"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***[6]***, Nagandra Nath Bora v Commissioner of Hills Division and Appeals Assam***[7] *and* ***Kaushalya Devi v Bachittar Singh***[8]*.*

8. It is, of course, not easy to define or adequately describe

[6] **(1955) 1 SCR 1104**
[7] **(1958) SCR 1240**
[8] **AIR 1960 SC 1168**

> 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.

11. The present petition is, accordingly, dismissed in *limine*.

12. 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.

APRIL 23, 2025/an

Click here to check corrigendum, if any