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

\+ W.P.(C) 5150/2025, CM APPL. 23452/2025 & CM APPL. 23453/2025

UNION OF INDIA SECRETARY, MINISTRY OF DEFENCE SOUTH BLOCK, NEW DELHI & ORS. .....Petitioners

Through: Mr. Aditya, Adv. for Mr. Padmesh Mishra, CGSC.

versus

EX WO HIRA LAL PRASAD .....Respondent

Through:

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 writ petition challenges order dated 23 November 2023 passed by the Armed Forces Tribunal[1] in OA 2105/2022, whereby the claim of the respondent for disability pension has been allowed by the AFT.

2. We note that this writ petition has been filed nearly one and a half years after the order passed by the AFT on 23 November 2023. There is not a whisper of an averment in the petition explaining the delay. In our view, the writ petition is liable to be dismissed even on

[1] "the AFT", hereinafter

the ground of delay and laches.

3. Nonetheless, as the issue in controversy is no longer *res integra*, we proceed to examine the matter on merits.

4. We have heard Mr. Aditya, learned Counsel who appears for Mr. Padmesh Mishra, learned Central Government Standing Counsel for the petitioner.

5. The respondent was released on medical grounds, as he was suffering from primary hypertension and retinal vasculitis in both eyes.

6. We have seen the record of the Release Medical Board[2]. From the record, the following facts emerged:

(i) The respondent had served in the Indian Air Force[3] for 35 years and 4 months before he was released on low medical category.

(ii) In the personal statement of the respondent, before the RMB, he has specifically stated that, at the time of his induction in the IAF, he was not suffering from the disabilities on the basis of which he was released from service. This assertion of the respondent is not doubted either in the proceedings of the RMB or in the pleadings of the petitioner before the AFT or

[2] "RMB", hereinafter
[3] "IAF", hereinafter

before this Court.

(iii) The RMB certified the respondent as suffering from 30% disability on account of primary hypertension and 20% disability on account of retinal vasculitis in both eyes, working out to an aggregate of 40% disability for life.

(iv) In the certificate issued by the Commanding Officer, the RMB has itself certified, in its record, that the ailments from which the respondent was found to be suffering were not attributable to any fault, negligence or misconduct on the respondent's part.

(v) A specific query in response of the RMB is in this regard reads thus:

2.(a) Was the disease/disability attributable to the individual's own negligence or misconduct? If Yes, in what way? Dis (i) & (ii) NO/NA
(b) If not attributable was it aggravated by negligence or misconduct? If so, in what way and to what percentage of the total disablement? Dis (i) & (ii) NO/NA

(vi) The justification provided for the view that the ailments from which the respondent was suffering were not attributable to military service reads thus:

"Primary Hypertension (Old) (I10.0)(Z09.0) : Onset of the disability was on Jun 10 while serving at Gwalior, and was posted to peace station prior to onset and no close time association with stress & strain of field/HAA/CIOPs & there was no delay in diagnosis or dietary compulsion or infection/Trauma. Hence

NANA as per para 43 of Ch-VI of GMO 2008.

Retinal Vasculitis Both Eyes CNVM Left Eye Post VEGF Status(H35.0): Onset of the disability was on Jan 17 while serving at Jamnagar, and was posted to peace station prior to onset and no close time association with stress & strain of field/HAA/CIOPs & there was no delay in diagnosis or dietary compulsion or Infection/Trauma. Hence NANA (The disability not covered in Ch-VI of GMO 2008)."

7. Thus, from a reading of the justification provided by the RMB, all that follows is that the onset of disability was when he was posted at a peace station, and that prior to onset, there was no close time association with stress or strain and there was no delay in diagnosis or dietary compulsions.

8. We fail to understand how the absence of any delay in diagnosis is a relevant factor, while assessing whether the ailments from which the officer is suffering were attributable to military service.

9. As regards, the remaining two aspects noted by the RMB, i.e., that the onset of disability was while the respondent was at peace posting and that there was no close time association with stress and strain, we have already examined these aspects in our judgment in ***UOI v Ex Sub Gawas Anil Madso***[4] and several orders which has been passed thereafter by us in similar cases.

10. We have also noted that the Supreme Court has observed, in various matters, that the mere fact that the onset of disability was while the respondent was at peace posting, was not *ipso facto*

[4] **2025 SCC OnLine Del 2018**

determinative of the issue of whether the ailment was attributable to military service or otherwise.

11. We have also seen the opinion of the specialist who had examined the respondent, which reads thus:

"CONFIDENTIAL

Appendix 'G'
(Ref to para 28 of Army Order 09/2011/DGMS)
11 AIR FORCE HOSPITAL

AGE: 55 YRS

Name	**SERVICE NO.**	**Rank**
HL PRASAD	697297 L	JWO
UNIT/SHIP	**TRADE/BRANCH/ CORPS**	~~ARMY/NAVY~~ /AF
28 WG	SEW	

SUMMARY AND OPINION OF SQN LDR NAMITA CHOUDHRY, GD SPLT OPHTHALMOLOGY, 11 AFH

DATED: 03 Sep 2020

DISABILITY: RETINAL VASCULITIS BOTH EYES, CNVM LEFT EYE POST VEGF STATUS

PRESENT CATEGORY: A4G4(T-24) wef 23 Mar 2020

ONSET: 56 yrs old serving JWO was apparently asymptomatic till Jan 2017 when he noticed sudden onset painless diminution of vision of in right eye, associated with distortion of vision in right eye. He was diagnosed as a case of Retinal Vasculitis and was given steroid injections in right eye. In 2019 he presented with similar complaints in lefts eye. He was found to have Posterior subcapsular cataract also in right eye. He was managed with steroid. He underwent intravitreal OZURDEX left eye on 17 Nov 2019. He also underwent Phacoemulsification with PCIOL in right eye and PST injection in left eye on 17 Dec 2019. Patient is on regular review since then. Now reported for review and recat.

OCULAR EXAM:

DVA: 6/60 improving to 6/6 with -1.50DS/-0.50DC X 90°
6/18 improving to 6/6 with +.075DS/+1.0DC X 25°

NV: N6 BE with +2.SODS BE

RIGHT EYE- ANTERIOR SEGMENT:: Lids & adnexa-WNL, Cornea-clear, Anterior chamber -Normal in depth and content, Pupil-Brisk, Lens-PCIOL in situ
POSTERIOR SEGMENT: Fundus- Media Clear, Optic disc normal, CDR 0.3:1, Vessels-sheathing in few peripheral vessels & tortuosity seen, Fr absent

LEFT EYE- ANTERIOR SEGMENT:: Lids & adnexa-WNL, Cornea-clear, Anterior chamber-Normal in depth and content, Pupil-Brisk, Lens-Cortical cataract
POSTERIOR SEGMENT: Fundus- Media Clear, Optic disc normal, CDR 0.3:1, peripheral retina and vessels Perivascular sheathing 360°, tortuosity of vessels seen, Fr absent

IOP 15 / 16 mm of Hg by NCT

DIAGNOSIS: RETINAL VASCULITIS BOTH EYES, CNVM LEFT EYE POST VEGF STATUS

RECOMMENDATION: Recommended to be placed in A4G3(P) for RMB.

Place: 11 AFH
Date: 03 Sep 2020”

12. Thus, even the specialist who examined the respondent has not opined that the ailments from which the respondent was suffering were not attributable to military service.

13. In these circumstances, no occasion arises for us to interfere with the impugned judgment of the AFT, within the limited parameters of our jurisdiction under Article 226 of the Constitution of India.

14. We are not sitting in appeal over the decision of the AFT.

15. Our jurisdiction is one of *certiorari* and is, therefore, circumscribed by the law as contained in the following passages from the judgment of the Supreme Court in ***Syed Yakoob v K.S. Radhakrishnan***[5]***:***

> "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*

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

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 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

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

> 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)

16. Within the limited parameters of our jurisdiction under Article 226 of the Constitution of India, we do not find any cause to interfere with the impugned judgment of the AFT. The impugned order is, therefore, affirmed in its entirety.

17. The writ petition is, accordingly, dismissed in *limine*.

18. In case, compliance with the AFT order has not been effected, let it be done within a period of four weeks from today.

C. HARI SHANKAR, J.

AJAY DIGPAUL, J.

APRIL 23, 2025/*AS*

Click here to check corrigendum, if any