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

\+ W.P.(C) 8083/2025, CM APPL. 35341/2025 & CM APPL. 35342/2025

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

Through: Mr. Balendu Shekhar, CGSC with Mr. Krishna Chaitanya and Mr. Rajkumar Maurya, Advs.
Major Anish Muralidhar, Army

versus

COL KOUTHARAPU SRINIVASA RETD .....Respondent

Through: Mr. O S Punia, Adv.

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

JUDGMENT (ORAL)

% 30.05.2025

C. HARI SHANKAR, J.

1. This petition assails order dated 20 December 2023 passed by the Armed Forces Tribunal[1] in OA 574/2019 whereby the respondent's application for grant of disability pension on the ground that he suffers from Rheumatoid Arthritis (M-05) and Primary Hypertension with 50% disability have been allowed by the AFT.

[1] "the AFT", hereinafter

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

3. Nonetheless, we have heard Mr. Balendu Shekhar, 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 Rheumatoid Arthritis (M-05) and Primary Hypertension. From the record, including the proceedings of the Release Medical Board[3], the following facts emerge:

(i) The respondent had served in the Indian Army (AOC) for over 26 years 6 months before he was diagnosed as suffering from Rheumatoid Arthritis (M-05) and Primary Hypertension.

(ii) The respondent, in his self-declaration, specifically declared that he had not been suffering from Rheumatoid Arthritis (M-05) and Primary Hypertension prior to joining the Indian Army (AOC). 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.

[2] **2025 SCC OnLine Del 2018**
[3] "RMB", hereinafter

(iii) The reason regarding the Rheumatoid Arthritis (M-05) and Primary Hypertension suffered by the respondent has not been attributable to military service, as entered by the RMB reads thus:

> "(a) Rheumatoid Arthritis: Idiopathic disorder gives history of being symptomatic since 2003 but reported sick in 2007 while serving in a peace area. Has served in peace areas in sheltered appointments thereafter. No exceptional stress and strain of service as per para 5 of Part III of AFMSF-16. Hence NANA.
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> (b) Primary Hypertension: Lifestyle disorder. Onset in 2010, while serving in peace. Has served in peace thereafter. No close time association with service in FD/Cl OPS/HAA. No exceptional stress and strain of service as per para 5 of part III of AFMSF-16 Hence NANA (Para 43, Chapter VI of GMO-2008)."

5. According to us, the respondent was rightly held entitled to disability pension on the ground of Rheumatoid Arthritis and Primary Hypertension, for the following reasons:

(i) The respondent had served for 26 years and 6 months before he was detected as suffering from Rheumatoid Arthritis and Primary Hypertension.

(ii) As per the statement of the respondent recorded in the RMB report, the respondent was not suffering from any disability at the time he joined the armed forces. The correctness of this declaration is not disputed.

(iii) In its report, for Rheumatoid Arthritis, all that was stated by the RMB was that (a) the disorder was idiopathic and (b) the respondent had served in peace areas in sheltered appointments with no exceptional stress and strain of service.

(iv) For Primary Hypertension, all that was stated was that (a) it was a lifestyle disease, (b) that the onset was in 2010 while serving in peace, (c) that the officer had no close time association with the forward areas/counter insurgency operations or high-altitude areas and (d) that he was not under any exceptional stress or strain of service.

(v) These factors, according to us, cannot determine whether the Rheumatoid Arthritis or Primary Hypertension from which the respondent was suffering was or was not attributable to military service.

(vi) As has been held by the Supreme Court in ***Dharamvir Singh v UOI***[4], primary hypertension can be caused even by a mere fact that a person is in military service, owing to the stresses and strains thereof.

(vii) The RMB has not assigned any other cause for the Rheumatoid Arthritis and Primary Hypertension from which the

[4] **(2013) 7 SCC 36**

respondent suffered, other than military service. Admittedly, the respondent was not suffering from these ailments at the time when he joined military service and had served for 26 years and 6 months before the ailments were detected.

(viii) In these circumstances, there is a presumption that the ailments were attributable to military service, unless some other cause was identified.

(ix) Merely terming a disorder as idiopathic or as a lifestyle disorder, does not by itself confirm that it was not attributable to military service. Hypertension is a disorder which can be caused by one's lifestyle but is, more often than not, attributable to other factors, stresses and strains being a primary cause of hypertension. We, therefore, do not understand how, by merely noting that a particular disorder was an idiopathic or a lifestyle disorder, the aspect of attributability could be determined. It is significant that there is no observation by the RMB to the effect that the Rheumatoid Arthritis or Primary Hypertension was attributable to any factor other than military service. Nor has the RMB opined that the respondent could have been suffering from these ailments at the time of entering service but there were not detected. Most significantly, the RMB has not identified any feature of the lifestyle led by the respondent as could have resulted in the hypertension or rheumatoid arthritis from which he was found to be suffering.

(x) An idiopathic ailment is one which arises suddenly, and for which the cause is unknown. There is not one scintilla of material, available on the record, on the basis of which it could be said that the rheumatoid arthritis from which the respondent was suffering was idiopathic in nature.

(xi) Rather, the opinion of the medical board, with respect to question nos. 2, 3 and 5 (a) and (b) read thus:

> "2 Old the disability exist before entering service. (Y/N/ Could be) ? No.
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> 3. In case the disability existed at the time of entry, is it possible that it could not be detected during the routine medical examination carried out at the time of the entry ? NA
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> *****
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> 5.(a) was the disability attributable to the individual's own negligence or misconduct ? if yes, in what way ? No.
>
> (b) if not attributable, was it aggravated by negligence or misconduct ? if yes, in what way and to what percentage of the total disablement. ? No"

6. 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. Characterising the ailment as an "idiopathic" disorder certainly does not satisfy

this requirement. 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:

5. (a) Was the disability attributable to individuals own negligence or misconduct (If Yes, in what way?) **No**

7. The RMB has certified the respondent as suffering from 50% disability on account of Rheumatoid Arthritis (M-05) and Primary Hypertension, lifelong.

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

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

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

11. The parameters of certiorari jurisdiction are delineated in the following passages of ***Syed Yakoob v K.S. Radhakrishnan***[5]**:**

[5] **AIR 1964 SC 477**

"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]*.*

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

> 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."
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> (Emphasis supplied)

12. 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.

13. 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***[9], 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

[9] **2025 SCC OnLine SC 895**

> the time of entry into service that the member suffered from any 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."

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

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

A closing comment

16. Countless challenges against the decision of the AFT to grant disability pension have come up before us, in the past few months. In nearly all cases – many of which deal with hypertension – we find that the opinion of the RMB says little or nothing. Even while acknowledging that the disorder, or ailment, was not found to exist at the time the officer or cadet joined military service, and was found, in most cases, after two, or even three decades, of military service, the

RMB merely contents itself by saying that it is a "lifestyle disorder" or that the officer was in a peace station when the ailment was detected and was not in contact with anyone affected, and the like. Such comments mean little or nothing. If hypertension, arthritis, diabetes, and the like are to arise as a result of prolonged military service, they may arise as much when the officer is on a peace posting as when he is on the field. Similarly, all "lifestyle disorders" are not necessarily attributable to one's lifestyle. A lifestyle disorder is merely a disorder which *may arise* as a result of an inveterate lifestyle, not one which *must have arisen* as a result of one's lifestyle. If the lifestyle of the officer is the cause of the ailment or disorder, the medical opinion must specifically identify the causative lifestyle factors. We find, in nearly every case, that this is never done, and that, in fact, even the specialist to whom the candidate is referred for opinion does not opine that the disorder or ailment is not attributable to military service, or is attributable to some other cause. In such circumstances, given the long line of authorities of the Supreme Court on the point, which we have attempted to distil in ***Gawas Anil Madso***, the benefit of doubt has to go to the officer, and there has to be a presumption that the ailment or disorder, is attributable to military service, and to nothing else.

17. We hope and trust that, in future, Medical Boards, while assessing whether the disability or ailment from which the applicant seeking disability pension is found to suffer is, or is not, attributable to or aggravated by, military service, the above words of advice, as well

as the law that we have attempted to lay down in ***Gawas Anil Madso***, would be borne in mind.

C. HARI SHANKAR, J.

AJAY DIGPAUL, J.

MAY 30, 2025/*sk*

Click here to check corrigendum, if any