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

\+ W.P.(C) 8235/2024 & CM APPL. 33897/2024

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

Through: Dr. Vijendra Singh Mahndiyan, CGSC with Ms. Apurva Singh, Mr. Vaibhav Singh, Advs. and SGT Manish Kumar Singh, DAV Legal Cell, Air Force.

versus

GP CAPT GAJENDRA KUMAR (RETD.) .....Respondent

Through: Mr. Shakti Jaidwal, Adv.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT (ORAL)

% 10.12.2025

C. HARI SHANKAR, J.

1. This writ petition assails order dated 11 July 2023 passed by the Armed Forces Tribunal[1], whereby OA 1008/2019, filed by the respondent, seeking grant of disability pension has been allowed.

2. The respondent was admittedly suffering from Diabetes Mellitus Type-II[2], assessed @ 15% to 19% for life.

3. The only contention advanced by Dr. Vijendra Singh Mahndiyan, learned CGSC for the petitioner is that Regulation 37 of the Pension Regulations for the Air Force, 1961, permits grant of

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

disability pension only where the disability pension is assessed @ 20% or above.

4. We may reproduce, for this purpose, Regulation 37, thus:

> "An officer who is retired from Air Force Service on account of a disability which is attributable to or aggravated by such service and is assessed at 20% or over may, on retirement, be awarded disability pension consisting of a service element and a disability element in accordance with the regulations in this section."

5. We find, as Mr. Shakti Jaidwal, learned Counsel for the respondent correctly points out, that this aspect has been considered by the AFT in the impugned judgment in the very opening paragraph of its analysis, i.e. para 7, which reads as under:

> "7. On the careful perusal of the materials available on record and also the submissions made on behalf of the parties, it is established that in so far as the disability of Diabetes Mellitus Type-II is concerned, the minimum assessment of the disability cannot be less than 20% in terms of MoD letter no. 16036/DGAFMS/MA (Pens)/Policy dated 20.12.2012, accorded concurrence on 12.05.2023 vide letter no. Air HQ/99801/4/DAV (Med). The only question which needs to be decided is whether the disability is attributable to or aggravated by military service."

6. The guidelines dated 20 July 2012, issued by the Ministry of Defence has also been placed on record by the respondent with his counter affidavit. To the extent relevant, the letter reads thus:

> "Tele: 2309 3442
>
> Office of the DGAFMS
> 'M' Block
> Ministry of Defence
> New Delhi 110 001
>
> 16036/DGAFM/MA(Pens)/Policy 20 Jul 2012

MoD/D (Pen/Policy)

GUIDE TO MEDICAL OFFICERS: ASSESSMENT OF DISABILITY PERCENTAGE IN DIABETES MELLITUS AND EPILEPSY CASES

1. There are no laid down guidelines for assessment of disability percentage in regard to Diabetes Mellitus and Epilepsy cases in Guide to Medical Officers (Military Pension) 2008. Due to lack of clear policy, problems are being faced in final adjudication and it is difficult to maintain uniformity. It is even more difficult to file reply in court cases.

2. Guidelines on assessment of disability percentage in Diabetes and Epilepsy cases in consultation with Senior Consultant (Medicine) have been framed. The details are as under:-

(a) **Diabetes Mellitus (DM):**

(i) DM Type II, on Oral Hypoglycemic agents(OHA) without Target Organ Damage(TOD) : 20%

(ii) DM Type II, on insulin without target organ damage : 30%

(iii) DM Type I/Type II with TOD : 40% and above As per clinical status

(iii) Impaired Fasting Glucose/Impaired Glucose tolerance : less than 20%

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3. These guidelines on assessment of Diabetes and Epilepsy are already in vogue at the level of Appeal medical board and assessment on the basis of these guidelines has already been accepted by the Appellate committee and Pension Sanctioning Authority.

4. This has the approval of DGAFMS.

5. Submitted for concurrence please.

(VK Mehta)
Brig
Dy DGAFMS (Pension)"

7. Dr. Mahndiyan, in this regard, submits that the aforesaid letter is merely in the nature of an executive instruction, whereas Regulation 37 is a statutory regulation.

8. In the first place, it is well-settled that an executive authority cannot argue contrary to its own instructions[3]. The guidelines dated 20 July 2012 have been issued from the Office of DGAFMS, Ministry of Defence. We do not see how the petitioner can seek to distance itself from the said guidelines.

9. Besides, there is, even on merit, no substance in Dr. Mahndiyan's submissions.

10. There is no conflict between the guidelines dated 20 July 2012 and Regulation 37 of the Pension Regulations for the Air Force, 1961.

11. Regulation 37 merely states that if disability is assessed at less than 20%, the officer would be entitled to disability pension. It makes no reference to any particular disability.

12. The guidelines dated 20 July 2012 have specifically been issued because of confusion regarding permissible percentages of disability in the case of DM-II and Epilepsy. According to the said guidelines, the minimum percentage of disability in the case of DM-II is 20%. As such, a person who is suffering from DM-II, as per the aforesaid

[3] Refer **State of U.P. v. Chandra Mohan Nigam, (1977) 4 SCC 345**

guidelines would have to be assessed to a minimum disability percentage of 20%.

13. This is the view that the learned AFT has taken in para 7 of the impugned judgment.

14. We are not expressing appellate jurisdiction over the decision of the AFT. We exercise *certiorari* jurisdiction, which is circumscribed by the law declared in the following passages from the judgment in ***Syed Yakoob v. K.S. Radhakrishnan*[4]:**

> "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*

[4] **AIR 1964 SC 477**

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

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

[5] **(1954) 2 SCC 881**
[6] **AIR 1958 SC 398**
[7] **AIR 1960 SC 1168**

> nature and scope of the legal provision which is alleged to have been misconstrued or contravened."
>
> (Emphasis supplied)

15. We do not find the decision of the AFT in Para 7 of the impugned judgment to be suffering from any such infirmity as would justify interdiction in exercise of the extra-ordinary jurisdiction conferred on us by Article 226 of the Constitution of India.

16. Mr. Mahndiyan has also sought to contend that the issue of whether disability pension could be granted in cases where disability was assessed at less than 20%, is pending before the Supreme Court.

17. We have no doubt in our mind that Regulation 37 does not permit disability pension to be granted if disability is less than 20%. We have pointed out that in the case of DM-II, the guidelines contained in the circular dated 20 July 2012 specifically ordain that disability has to be treated as a minimum of 20% where the candidate is suffering from the said ailment.

18. As such, Regulation 37 cannot stand in the way of respondent's entitlement to disability pension.

19. Within the limited parameters of Article 226 of the Constitution of India, no case for interference with the impugned order of the AFT is made out.

20. The writ petition is, accordingly, dismissed.

21. We direct implicit compliance with the direction issued by the AFT within a period of twelve weeks from today.

C. HARI SHANKAR, J

OM PRAKASH SHUKLA, J

DECEMBER 10, 2025/*gunn*