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

\+ W.P.(C) 17203/2025, CM APPLs. 70761/2025 & 70762/2025

UNION OF INDIA & ORS. .....Petitioner

Through: Mr. Piyush Gupta, CGSC with Mr. Atishay Jain and Ms. Komal, Advs. for UOI with Sgt. Manish Kumar Singh and Sgt. Mritunjay, DAV Legal Cell (Air Force)

versus

EX JWO RAJIW KUMAR MISHRA
SERVICE NO 751433 .....Respondent

Through: Ms. Deepika Sheoran, Mr. Abhishek Gahlyan and Mr. Baljeet Singh, Advs.

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

JUDGMENT (ORAL)

% 13.11.2025

C. HARI SHANKAR, J.

1. This petition assails orders dated 29 March 2023 passed by the Armed Forces Tribunal[1] in OA 2412/2019 whereby the respondent's application for grant of disability pension on the ground that he suffers from Primary Hypertension and Impaired Glucose Tolerance (Old) compositely 40%, rounded off to 50%, lifelong, has been allowed by the AFT.

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

[1] "the AFT", hereinafter

[2] **318 (2025) DLT 711**

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3. Nonetheless, we have heard Mr. Piyush Gupta, learned CGSC 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 Primary Hypertension and Impaired Glucose Tolerance (Old). From the record, including the proceedings of the Release Medical Board[3], the following facts emerged:

(i) The respondent had served in the Air Force for over 22 years before he was diagnosed as suffering from primary hypertension and impaired glucose tolerance (Old).

(ii) The respondent, in his self-declaration, specifically declared that he had not been suffering from Primary Hypertension and Impaired Glucose Tolerance (Old) prior to joining the 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 Primary Hypertension and Impaired Glucose Tolerance (Old) suffered by the respondent has not been attributable to military service, as entered by the RMB reads thus:

[3] "RMB", hereinafter

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> "Primary Hypertension (Old): Onset in Jan 16 in peace area (Jorhat) where individual was posted since Jan 15. Remained in peace only after onset. Hence NANA in terms of Para-43, Chapter-VI of GMO 2008.
>
> Impaired Glucose Tolerance (Old): Onset in Jan 16 in peace area (Jorhat) where individual was posted since Jan 15. Remained in peace only after onset. Hence NANA in terms of Para-26, Chapter-VI of GMO 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. 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 the individual's own negligence or misconduct? If yes, in what way? No, N/A

(v) Regarding para 43 of the Chapter VI of the GMO 2008, we have, in our judgment in ***UOI v WO Binod Kumar Sah (Retd[4])***, observed thus:

> "12. Para 43 of the Chapter VI of the GMO 2008, vivisected into its individual components, specifies that, while dealing with hypertension,
>
> > (i) the RMB is required to determine whether the hypertension is primary or secondary,

[4] **2025 SCC OnLine Del 2355**

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(ii) if the hypertension is secondary, entitlement consideration should be directed to the underlying disease process,

(iii) where disablement for essential hypertension appears to have arisen to, or become worse in, service, it has to be considered whether service compulsion caused aggravation,

(iv) in cases where the disease has been reported after long and frequent spells of service in Field/HAA/Active Operational Areas, the case could be explained by variable response exhibited by different individuals to stressful situations and

(v) primary hypertension would be considered aggravated if it occurred while the officer was serving in field areas, HAA, CIOPS areas or prolonged afloat service."

(vi) Regarding para 26 of the Chapter VI of the GMO 2008, we have, in our judgment in ***UOI v EX MWO HFO Bharat Tiwari***[5], observed thus:

"11. Para 26 of the Chapter VI of the GMO 20087, vivisected into its individual components, specifies that, while dealing with diabetes mellitus:

(i) DM is a metabolic disease,

(ii) DM is characterised by hyperglycaemia,

(iii) DM is of two types, Type I and Type II with the physiological and pathological reason for the arising of the disease,

(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

[5] **2025 SCC OnLine Del 2358**

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> if onset occurs serving in Fields/CIOPS/HAA and prolonged afloat service, and
>
> (vi) Diabetes secondary to chronic pancreatitis due to alcohol dependence and gestational diabetes should not be considered attributable to service."

(vii) The RMB has certified the respondent as suffering from 40% disability on account of primary hypertension and impaired glucose tolerance (Old), for life.

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

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

7. 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.

8. The parameters of *certiorari* jurisdiction are delineated in the following passages of ***Syed Yakoob v K.S. Radhakrishnan***[6]**:**

> "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*

[6] **AIR 1964 SC 477**

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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***[7]***, Nagandra Nath Bora v Commissioner of Hills Division and Appeals Assam***[8] *and* ***Kaushalya Devi v Bachittar Singh***[9]*.*

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*

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

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> *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)

9. 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.

10. 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***[10], 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

[10] **2025 SCC OnLine SC 895**

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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.

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 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.

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

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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."

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

12. Compliance with the impugned judgement of the AFT, if not already ensured, be ensured within a period of 12 weeks from today.

C. HARI SHANKAR, J.

OM PRAKASH SHUKLA, J.

NOVEMBER 13, 2025/*aky*

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