



2025:DHC:5958-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 10427/2025, CM APPL. 43297/2025
UNION OF INDIA & ORS.Petitioners
Through: Mr. Satya Ranjan Swain, Sr. PC
with Major Anish Muralidhar Army

versus

NO.4192313K EX NK KUNDAN SINGHRespondent
Through:

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

JUDGMENT (ORAL)

22.07.2025

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C. HARI SHANKAR, J.

1. This petition assails order dated 29 February 2024 passed by the Armed Forces Tribunal¹ in OA 2094/2019 whereby the respondent's application for grant of disability pension on the ground that he suffers from Acute Myocardial Infarction with 30% disability has been allowed by the AFT.

2. The issue is covered by a recent decision rendered by one of us (C. Hari Shankar J.) in *Ex Sub Gawas Anil Madso*.

3. Nonetheless, we have heard Mr. Satya Ranjan Swain, learned SPC for the petitioners, and have perused the record.

¹ "the AFT", hereinafter



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4. The respondent was released in Low Medical Category on his being found to be suffering from Acute Myocardial Infarction. From the record, including the proceedings of the Release Medical Board², the following facts emerged:

(i) The respondent had served in the Indian Army for over 18 years before he was diagnosed as suffering from Acute Myocardial Infarction.

(ii) The respondent, in his self-declaration, specifically declared that he had not been suffering from Acute Myocardial Infarction prior to joining the Indian Army. The declaration reads thus:

2. Did the disability exist before entering service?
(Y/N/ could Be): 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 Acute Myocardial Infarction suffered by the respondent has not been attributable to military service, as entered by the RMB reads thus:

“Acute Myocardial Infarction: No close time association with service in Fd/CIOPC/HAA with para 47 of Chapter VI of GMO (MP) 2008. 14 days charter of duties off.”

(iv) We have already held, in our judgment in *Gawas Anil Madso*, that where the applicant was not suffering from the

² “RMB”, hereinafter



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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

(v) Regarding para 47 of the Chapter VI of the GMO 2008, we have, in our judgment in *UOI v EX JWO Dharmendra Prasad*, observed thus:

“10.2 We have seen para 47 of the 2008 Guidelines, which read as under:—

47. Ischaemic Heart Disease (IHD). IHD is a spectrum of clinical disorders which includes asymptomatic IHD, chronic stable angina, unstable angina, acute myocardial infarction and sudden cardiac death (SCD) occurring as a result of the process of atherosclerosis. Plaque fissuring and rupture is followed by deposition of thrombus on the atheromatous plaque and a variable degree of occlusion of the coronary artery. A total occlusion results in myocardial infarction in the territory of the artery occluded. Prolonged stress and strain hastens atherosclerosis by triggering of neurohormonal mechanism and autonomic storms. It is now well established that autonomic nervous system disturbances precipitated by emotions, stress and strain, through the agency of catecholamines affect the lipid response, blood pressure, increased platelet aggregation, heart rate and produce ECG abnormality and arrhythmias.



The service in field and high altitude areas apart from physical hardship imposes considerable mental stress of solitude and separation from family leaving the individual tense and anxious as quite often separation entails running of separate establishment, financial crisis, disturbance of child education and lack of security for family. Apart from this, compulsory group living restricts his freedom of activity. These factors jointly and severally can become a chronic source of mental stress and strain precipitating an attack of IHD. IHD arising in while serving in Field area/HAA/CI Ops area or during OPS in an indl who was previously in SHAPE-I will be considered as attributable to mil service.

Entitlement in Ischemic heart disease will be decided as follows:—

(a) Attributability will be conceded where : A myocardial infarction arises during service in close time relationship to a service compulsion involving severe trauma or exceptional mental, emotional or physical strain, provided that the interval between the incident and the development of symptoms is approximately 24 to 48 hours. IHD arising in while serving in Field area/HAA/CI Ops area or during OPS in an indl who was previously in SHAPE-I will be considered as attributable to mil service.

Attributability will also be conceded when the underlying disease is either embolus or thrombus arising out of trauma in case of boxers and surgery, infectious diseases. E.g. Infective endocarditis, exposure to HAA, extreme heat.

(b) Aggravation will be conceded in cases in which there is evidence of:—

IHD occurring in a setting of hypertension, diabetes and vasculitis, entitlement can be judged on its own merits and only aggravation will be conceded in these cases. Also aggravation may be conceded in persons having been diagnosed as IHD are required to perform duties in high altitude areas, field areas, counter insurgency areas, ships and submarines due to service compulsions.

There would be cases where neither immediate nor



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prolonged exceptional stress and strain of service is evident. In such cases the disease may be assumed to be the result of biological factors, heredity and way of life such as indulging in risk factors e.g. smoking. Neither attributability nor aggravation can be conceded in such cases.”

(vi) The RMB has certified the respondent as suffering from 30% disability on account of Acute Myocardial Infarction, lifelong.

5. In such circumstances, we have held in our 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. Mr. Satya Ranjan Swain, learned Senior Panel Counsel for the petitioners has pointed out to us that, in the finding of the Medical Specialist, it is noted thus:

“Disability: Acute Myocardial Infarction

Clinical Profile: Smoker with no modifiable coronary risk factors or significant past medical/family history sustained STEAMI on 20 Jan 2015 & was thrombo-lysed in civil hospital followed by evaluation in AH(R&R) where echo was normal & coronary angiography on 26 Jun 2015 revealed recanalized LAD He was placed in LMC P2 [P] wef 03 Feb 2016 & has now been referred for for RMB.

Present Status: Functional status NYHA-I
Pulse-76/min, regular, equal, BP-110/70 mm Hg RUL.



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General & Systemic Exam = NAD
Haematologic-Metabolic Profile, Urinalysis
& CXR= WNL ECGTIII; TMT = Negative
for RMI@12.4 Mets

Opinion: Recommended release in LMC P 2 [P];

Advice: Tab Ecosprin 150 mg once daily at night
after food
Tab Atorvastatin 20 mg once daily at night
Tab Metoprolol XL 25 mg once daily at
night
Therapeutic lifestyle changes as explained
Monthly review by AMA”

8. Though the report refers to the petitioner as a smoker, it does not, even impliedly, opine that the Acute Myocardial Infarction from which the petitioner was found to suffer was because of smoking. Given the law laid down by the Supreme Court in *Dharamvir Singh v UOI*³ and *Bijender Singh v UOI*⁴, by this Bench in *UOI v Ex Sub Gawas Anil Madso*⁵ and a few of further orders and the Coordinate Bench in *UOI v Captain Sanjay Kumar*⁶, *UOI v MWO Jahangeer Alam*⁷, *UOI V EX JWO SK Srivastava*⁸ etc., where the officer was not found to be suffering from the ailment at the time of entry into service and was found to suffer after several years, the onus which on the RMB or the medical specialist to positively identify another cause for the ailment, other than military service.

9. That link is lacking in the present case. The mere reference to the respondent as a smoker in our view is insufficient. We find no

³ (2013) 7 SCC 316

⁴ 2025 SCC OnLine SC 895

⁵ 2025 SCC OnLine Del 2018

⁶ 2025 SCC OnLine Del 4487

⁷ 2025 SCC OnLine Del 2434

⁸ 2025 SCC OnLine Del 4909



reason to differ with the earlier view we have taken.

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 in appeal over the said decision.

11. The parameters of *certiorari* jurisdiction are delineated in the following passages of *Syed Yakoob v K.S. Radhakrishnan*⁹:

“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 improperly, 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*

⁹ AIR 1964 SC 477



*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**¹⁰, **Nagandra Nath Bora v Commissioner of Hills Division and Appeals Assam**¹¹ and **Kaushalya Devi v Bachittar Singh**¹²).*

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.”

(Emphasis supplied)

¹⁰ (1955) 1 SCR 1104

¹¹ (1958) SCR 1240

¹² AIR 1960 SC 1168



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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*, 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.

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



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by the Re-Survey Medical Boards that the disease for which the appellant was invalidated 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 invalidated 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 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.

C. HARI SHANKAR, J.

OM PRAKASH SHUKLA, J.

JULY 22, 2025/aky