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

\+ W.P.(C) 4793/2025, CM APPLs. 22041/2025 & 22042/2025

UNION OF INDIA & ANR. .....Petitioners

Through: Mr. Jitesh Vikram Srivastava, Sr. PC with Mr. Dipanshu Sharma, Adv.

versus

HFO (MWO) PREM LAL PANDEY MT FIT (RETD) .....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 assails order dated 6 August 2024, passed by the Armed Forces Tribunal[1] in OA 611/2022.

2. By the OA, the respondent, who was discharged from service on 31 January 2006 on the ground of disability, sought disability pension. The AFT has, keeping in mind the judgment of the Supreme Court in ***Dharamvir Singh v UOI*[2]**, granted the claim of the respondent.

3. The ailment from which the respondent suffered was primary

[1] "AFT", hereinafter
[2] **(2013) 7 SCC 316**

hypertension.

4. We have dealt with a similar matter in our decision in ***UOI v Ex Sub Gawas Anil Madso***[3]***,*** in which we have attempted to go through and scan the entire body of case law in that regard starting with the decision in ***Dharamvir Singh.***

5. We do not deem it necessary to reiterate the findings in that judgment, which speak for themselves.

6. We have therefore perused and considered the present case in the light of our decision in ***Ex Sub Gawas Anil Madso.***

7. From the record of the Release Medical Board[4] proceedings, the following position emerges:

(i) The respondent, having enrolled in the Air Force, served for a period of 37 years and 4 months, before he was diagnosed as suffering from primary hypertension.

(ii) To a query as to whether he suffered from any disability before joining the armed forces, the respondent answered in the negative. The correctness of this assertion is not disputed either in the record of the RMB or in the pleadings of the petitioner-UOI before the AFT or before this Court.

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

(iii) In the Statement of Case, forming Part IV of the RMB record, it is acknowledged that the onset of primary hypertension, in the case of the respondent, was of 10 September 2002.

(iv) Part V of the RMB record contains the opinion of the Medical Board. While opinion that the primary hypertension from which the respondent suffered was neither attributable nor aggravated by military service, the reason in that regard as provided in the RMB report, is as under:

> "Disease is constitutional in nature."

(v) In the same part of the report of the RMB, to a query as to whether the disease/disability was attributable to the respondent's own negligence or misconduct, the RMB has specifically answered in the negative. Similarly, to a further query as to whether the hypertension of the respondent was aggravated by the negligence or misconduct of the respondent, too, the answer of the RMB is in the negative. In other words, it is an admitted position that the respondent is not in any way responsible, owing to his mode of life or any other reason, for the primary hypertension from which he was found to be suffering.

(vi) The report of the RMB further certifies that the respondent was suffering from 30% disability lifelong.

(vii) We have also seen para 43 in Chapter VI of GMO, 2008, which reads thus:

> "43. **Hypertension.** The first consideration should be to determine whether the hypertension is primary secondary. If or secondary, entitlement considerations should be directed to the underlying disease process (e.g. Nephritis), and it is unnecessary to notify hypertension separately.
>
> As in the case of atherosclerosis, entitlement of attributability is never appropriate, but where disablement for essential hypertension appears to have arisen or become worse in service, the question whether service compulsions have caused aggravation must be considered. However, in certain cases the disease has been reported after long and frequent spells of service in field/HAA/active operational area. Such cases can be explained by variable response exhibited by different individuals to stressful situations. Primary hypertension will be considered aggravated if it occurs while serving in Field areas, HAA, CIOPS areas or prolonged afloat service."

From a reading of the aforesaid para 43, it is apparent that, where the claimant is found to be suffering from essential hypertension which has arisen during service, the question of whether service is attributable to the hypertension has to be looked into. The paragraph, the application also notes that such cases could be explained by variable response exhibited by individuals in stressful situations. Prolonged afloat service is one of the considerations which has been noted as relevant in that regard. We have already seen that, in the case of the respondent, he had undertaken 37 years and 4 months of service.

(viii) We have also seen the opinion of the medical specialist,

which has been annexed in the writ petition. That opinion, too, does not state at any point that the primary hypertension from which the respondent was suffering was not attributable to military service.

8. We are not sitting in appeal over the decision of the AFT. We are exercising certiorari jurisdiction, the parameters of which are set out in the following passages from ***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 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*

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

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 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

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

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

9. In view of the aforesaid factual and legal position, we do not find that, within the parameters of Article 226 of the Constitution of India, a case for interference with the impugned order of the AFT is made out.

10. The writ petition is accordingly dismissed in *limine*.

11. Compliance with the order of the AFT, if not already made, be ensured within a period of four weeks from today.

C. HARI SHANKAR, J.

AJAY DIGPAUL, J.

APRIL 23, 2025*/aky*

Click here to check corrigendum, if any