



2025:DHC:3207-DB



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

+ W.P.(C) 2533/2025 & CM APPL. 11959/2025

UNION OF INDIA & ORS. ....Petitioners

Through: Mr. Amit Tiwari, CGSC with  
Mr. Abhigyan Siddhant, GP for UOI with  
Major Anish Muralidhar (Army)

versus

MAJOR GENERAL DHIRAJ MOHAN .....Respondent

Through: Mr. Indra Sen Singh and Ms.  
Kaberi Sharma, Advs.

**CORAM:**

**HON'BLE MR. JUSTICE C. HARI SHANKAR**

**HON'BLE MR. JUSTICE AJAY DIGPAUL**

**JUDGMENT (ORAL)**

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**28.04.2025**

**C.HARI SHANKAR, J.**

1. The respondent was commissioned in the Indian Army on 11 June 1988. He was promoted as Colonel on 2 May 2005, as Brigadier on 18 March 2013 and was posted as Chief Engineer of the Delhi Zone and Incharge of the construction of a Cardiothoracic and Vascular Surgery<sup>1</sup> project in the Army Research and Referral Hospital<sup>2</sup>, Delhi. He was thereafter promoted as Major General on 2 December 2019.

2. The work of the respondent as CE Delhi Zone and Incharge of construction of the CTVS project in the R & R Hospital was

<sup>1</sup> "CTVS", hereinafter

<sup>2</sup> "R&R Hospital", hereinafter



completed on 31 May 2014 and the project was closed on 15 November 2015. The CTVS project was inaugurated by the Defence Minister on 25 May 2015.

3. On 30 December 2019, the respondent was issued a show cause notice, in respect of an investigation conducted by a Technical Board of Officers<sup>3</sup> with regard to certain perceived irregularities in the construction of the CTVS. The respondent filed an interim reply to the show cause notice on 20 January 2020 and the final reply on 14 August 2020.

4. In July to August 2020, it appears that an anonymous complaint was also received by the petitioners, containing allegations against the respondent with respect to the CTVS project. This resulted in a second show cause notice, issued to the respondent on 12 August 2021, alleging certain lapses on his part as Chief Engineer Incharge of construction of the CTVS project. The respondent submitted his interim reply on 16 September 2021, in which he sought certain documents. The respondent contends that he did not receive the said documents but that, nonetheless, he submitted a final reply on 26 October 2021.

5. On 18 February 2022, alleging that the respondent was guilty of 13 days delay in conducting the Phase II Monsoon Tests in respect of the CTVS project, the respondent was awarded the punishment of displeasure/censure.

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<sup>3</sup> "TBO", hereinafter



6. The respondent preferred a statutory complaint against the said decision on 18 March 2022, which remained unreplied.
7. Aggrieved thereby, the respondent approached the Armed Forces Tribunal<sup>4</sup> by way of OA 709/2022<sup>5</sup>.
8. Before the AFT, the respondent contended that the imposition of censure on him by the order dated 18 February 2022 was violative of the Policy dated 11 October 2019 of the Army Headquarters. The respondent's contention was that no culpability could have been fixed on him in respect of MES<sup>6</sup> related works, merely on the basis of the findings in a TBO, without holding a Staff Court of Inquiry<sup>7</sup>.
9. The AFT, therefore, identified the issue arising before it for consideration as to whether an army officer could be awarded censure solely on the basis of the findings of the TBO without holding an SCOI in the case of MES works matters, in view of the Policy letter dated 11 October 2019.
10. The AFT, in para 29 of the impugned judgment has noted as under:

“29. From the perusal of the file on which the award of Censure to the applicant was processed, it can be seen from the note-sheets 17, 18 and 19 that initiation of a Staff Col was recommended by the Dy. JAG, Western Command, MGIC Adm and COS of Western Command respectively, and the same was approved by the Army Cdr, Western Comd vide note 20 on 21.04.2021. In fact the

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<sup>4</sup> “AFT”, hereinafter

<sup>5</sup> **Major General Dhiraj Mohan v UOI and Ors.**

<sup>6</sup> “Military Engineering Service” hereinafter

<sup>7</sup> “SCOI” hereinafter



draft convening order for instituting a Col was approved by the GOC-in-C, Western Cmd on 03.05.2021. However, it is not understood as to why the Staff Col was not conducted and in lieu thereof, vide note 23 dated 03.08.2021, Col 'A' (D&V)/Western Command has recommended 'adm action' against the applicant based on the findings of the TBO and issue of SCN to the applicant as well as imposition of DV ban type 'A' which was approved by the GOC-in-C, Western Cmd on 07.08.2021. The rationale for change over from instituting a Staff Col to proceed against the applicant purely based on the findings of the TBO has not been brought out on the relevant file. It is our considered view that the decision not to institute the Staff Col and take administrative action against the applicant based solely on the TBO findings is in violation of the Army HQ letter No. 61639/Gen/AG/DV-4(A) dated 15.02.2019 and is not sustainable in the eyes of the laid down law as brought out in Para 28 hereinabove.”

**11.** Thus, though the proposal for instituting the SCOI, consequent on the finding of the TBO in respect of the respondent had in fact been recommended by the Deputy Judge Advocate General<sup>8</sup>, Western Command and the COS of the Western Command, and had even been approved by the Army Commander, Western Command on 21 April 2021, after which a draft convening order for instituting a COI was also approved by the GOC-in-C, Western Command on 3 May 2021, the SCOI, for some unknown reason, was not conducted and, instead, *vide* note dated 3 August 2021, administrative action for awarding of censure, following an issuance of show cause notice, was instead adopted.

**12.** On the legal position, the AFT has reproduced paras 5, 6, 11, 12, 14, 15, 20 and 26 of the Army Headquarter Policy letter, dated 15 February 2019, is reproduced thus:

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<sup>8</sup> “Deputy JAG”, hereinafter



“Tech Board of Officers (TBO)

5. The TBO also referred as Departmental Inquiry, is first stage of Inquiry/investigation into any MES works/services related subject/issues/matters. It can be ordered at the level of CE Zone/CE Command/E-in-C Branch, as applicable. The TBO proceedings would invariably be taken into acct while convening a Staff C of I/B of I by Service HQs of Army, Air Force and Navy, as deemed fit and appropriate.

6. Necessity and Role of TBO.

(a) Necessity. A TBO/Departmental inquiry is a legal necessity in order to proceed against Civilian Officials under the Provisions of CCS (CCA) Rules, 1965. Since, Civilians in the Defence Services are governed by the CCS (CCA) Rules 1965, only the Appointing Authority is competent to direct and initiate disciplinary actions.

(b) Role of TBO. A TBO, being purely technical in nature, would go into the following aspects and bring out the defects/shortcomings/irregularities quantitative/qualitative works/services/matters:-

- (i) Specifications.
- (ii) Quality of work.
- (iii) Design issues.
- (iv) Works procedure.
- (v) Accounting and storage.
- (vi) Any other issue pertaining to quality of work.

(c) TBO will examine the nature of irregularities. ascertain the defects, propose remedial measures including rectifications and pinpoint responsibility, if any. On finalization of TBO, It shall be forwarded to E-in-C's Branch, duly incorporating the comments/recommendations of CE Zone/CE Command.”

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11. The TBO proceedings and actions thereon, if found insufficient to logically address the reasons for the defective wk and shortcomings, it would be inquired/investigated by the competent Service HQ of Army, Air Force and Navy through a staff C of I/B of I. The TBO proceedings thereof can be included in such a Staff C of I/B of I, if deemed necessary. Decision to order C of I/B of I, rests with the concerned Fmn Cdr based on the finding of 'TBO'.



12. The disciplinary proceedings for civilian and Service personnel will be dealt with separately, after the TBO. The proceedings of MES civilian personnel will commence immediately after approval/concurrence of TBO under the provision of CCS (CCA) Rules. However, to investigate culpability of military personnel, holding of staff court of Inquiry is mandatory.

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14. Necessity. The inquiry/ investigation into MES matters, wherein Army and Air Force/Navy-executives and staff are involved, C of I/B of I must be ordered by the staff on behalf of the AOC-in-C/FOC-in-C or their subordinate formation Cdrs at appropriate HQs.

15. Staff C of I/B of I is to fix responsibility regarding lapses on the part of persons, both Army and users, involved in the case. Invariably, following would be investigated/inquired into:-

- (a) Breach of discipline.
- (b) Non-adherence to laid down standards and criteria.
- (c) Dereliction of duties in carrying out laid down supervision, checks and tests.
- (d) Unauthorized deviation from the laid down orders and policies.
- (e) Financial losses and apportioning responsibility for such losses.
- (f) Non-observance of direction given by the higher authorities.
- (g) Other aspect considered essentially by the convening authority.

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20. Compliance of Provisions of Army Rule 180. This Rule makes it obligatory that whenever during a C of I/B of I, the character/military reputation of a person subject to the Army Act is likely to be affected, Army Rule 180 has to be complied with by the Presiding Officer. It has been observed that disciplinary proceedings/administrative action become legally untenable due to non-compliance of provision of Army Rule during C of I/B of I stage by Service HQ of Air Force and Navy. This not only causes unwarranted delay in finalization of disciplinary proceedings but renders the concern service HQ helpless in dealing with delinquent officers/subordinates, who are under the Army Act.

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### Conclusion

26. Staff C of I/B of I is a vital tool at the disposal of Service HQ of Air Force and Navy to investigate the reason for the sub-standard and poor quality of MES Works/services matters and get the culpable/blameworthy officials penalized by the concerned Disciplinary Authority. The purpose of this letter is to lay down the policy by refining the existing procedure, remove anomalies/shortcomings noticed in works related cases dealt by Service HQ of Air Force and Navy in the past. Notwithstanding above, peculiar issues faced by Service HQ of Air Force and Navy on MES works/services-matters, if any, should be referred to E-in-C's Branch for timely and prompt action.”

**13.** Following this, we may note that, in the impugned order passed by the AFT, paras 12, 13, 15, 16, 21, and 27 of the instructions dated 11 October 2019, are numbered as 11, 12, 14, 15, 20 and 26, and the reference is to a Policy dated 15 February 2019. In any event, there is no textual difference between these paras, and the difference if any is only one of numbering.

**14.** Having extracted the relevant provisions of the Policy, the AFT has proceeded to hold, in para 24 to 26 of the impugned order, thus:

“24. Para 5 reveals that TBO is the first stage of inquiry/investigation into an MES/Works and its proceedings would invariably be taken into account while convening a Staff CoI/BOI by SVC HQ as deemed fit and appropriate. It was, therefore, very appropriate in the present case that a TBO was ordered to inquire into an MES related work (CTVS Project of R&R Hospital).

25. Para 6 reveals that a TBO is legal necessity in order to proceed against only civilian officials under the provisions of CCS (CCA) Rules, 1965, which means based only on the findings of the TBO, disciplinary action cannot be initiated against an Armed Forces Officer.

26. Para 11 reveals that TBO proceedings and actions thereon, if found insufficient to logically address the reasons for defective



work and shortcomings, it would be inquired/investigated by the competent SVC HQ through a Staff CoI/BoI. The TBO proceedings thereof can be included in such a Staff CoI/BoI, if deemed necessary. Decision to order CoI/BoI rests with the concerned Fmn Cdr based on the finding on 'TBO'. The contention of the respondents that ordering a CoI/BOI rests with the concerned formation Cdr based on the findings of the TBO is not completely true and out of context. The discretionary authority whether to order CoI/BoI into MES Works with the Formation Cdr is only to the extent of logically addressing the defective work and shortcomings if not sufficiently addressed by the TBO and not for the purpose of initiating disciplinary/ Administrative action.”

**15.** In conclusion, the AFT has held thus:-

“32. Keeping in view the above parameters partially allowed and the award of censure of 'Displeasure' to the applicant by the GDC-in-C, Western Comd is considered illegal and thus is quashed. It is directed that the applicant be considered as a special review case, with the next physically available Fresh batch as per the policy in vogue. It is also important to note that since the applicant has since retired on 31.03.2023 and there will not be any fresh ACR/input available on the applicant whilst considering him with the next physical available Fresh batch, the applicant be benchmarked as per the SSB held on 25.08.2022 along with his batch. The officer, if found fit for empanelment to the rank of Lt Gen, be notionally promoted to the rank of Lt Gen with all consequential benefits.”

**16.** Aggrieved by the aforesaid decision, the Union of India, is before us, by means of the present writ petition.

**17.** We have heard Mr. Amit Tiwari, learned CGSC for the Union of India and Mr. Indra Sen, learned Counsel for the respondent at length.

**18.** Mr. Tiwari has endeavored to convince us that there was no necessity for convening an SCOI in the case of the respondent. He



has sought to submit, that paras 13 and 14 of the instructions *supra* are required to be read harmoniously. Thus read, para 13 requires an SCOI to be convened only where there is any discrepancy regarding facts. For this purpose, he relies on the purpose of holding an SCOI as set out by the Supreme Court in para 19 of its judgment in *UOI v Major A. Hussain*<sup>9</sup>.

**19.** Mr. Tiwari submits that, therefore, an SCOI is in the nature of fact finding enquiry and, once the facts had already been asserted by the TBO, and the respondent has admitted his complicity therein, there was no further investigation required to assess whether the respondent was or was not culpable in the entire episode. As such, no occasion to hold an SCOI, even in terms of para 13 of the instructions existed.

**20.** Mr. Tiwari further submits that the respondent did not seek for an SCOI to be held either in his interim or in his final reply to the show cause notice dated 12 October 2021 which has been issued to him.

**21.** Mr. Tiwari has also placed reliance on a Circular dated 11 August 2017 issued by the Additional Director General, Discipline and Vigilance, Adjutant General's Branch, Integrated HQ of MoD (Army), New Delhi, which deals with "award of censure to officers", from which he has referred us to paras 3 and 4, which read thus:

"3. The award of censure is an administrative action, in keeping with the custom of the service. It can be awarded to officers including MNS officers and re-employed officers, and

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<sup>9</sup> 1998 1 SCC 537



JCOs. It takes the form of Reproof. Displeasure or Severe Displeasure of the officer awarding the censure. Censure is not awarded to a warrant officer of Other Ranks. However, ‘Reproof’ in terms of Para 327 of Regulations for the Army (Revised Edition) 1987 may be administered to a warrant officer or Other Ranks

4. Censure is awarded for an act, conduct, omission or offence of a minor nature and not in a case involving moral turpitude, fraud, theft, dishonesty, financial irregularity and misappropriation. The latter are to be tried by a Court Martial or by prosecution in a civil court in accordance with Para 432 of the Regulations for the Army (Revised Edition) 1987. An act/omission where there is an absence of criminal intent can be dealt with by award of censure. An offence will not be disposed off prematurely by award of censure without reference to a superior authority who may consider disciplinary action under the Army Act 1950.”

22. Mr. Tiwari, relies on para 4 (r-III at page 223), which reads as under:

“It is submitted that based on established culpability of the Applicant through a TBO, the Applicant was afforded with opportunity for obtaining version through a SCN and later providing documents asked for by him. That the version of the Applicant was obtained prior to processing the disciplinary case through competent disciplinary Authority i.e., Respondent No. 4.”

23. We have heard learned Counsel for the parties at length.

24. We have to be conscious of the fact that we are exercising certiorari jurisdiction and are not sitting in appeal over the decision of the AFT. The limits of certiorari jurisdiction stand thus delineated in the judgment of the Supreme Court in *Syed Yakoob v K.S. Radhakrishnan*<sup>10</sup>:

“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

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<sup>10</sup> 1963 SCC OnLine SC 24



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 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**<sup>11</sup>, **Nagandra Nath Bora v Commissioner of Hills Division and Appeals Assam**<sup>12</sup> and **Kaushalya Devi v Bachittar Singh**<sup>13</sup>).

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

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<sup>11</sup> (1955) 1 SCR 1104

<sup>12</sup> (1958) SCR 1240

<sup>13</sup> AIR 1960 SC 1168



*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)

**25.** Within the limited parameters of certiorari jurisdiction, we do not find that any case for interference with the impugned order passed by the AFT is made out.

**26.** We cannot subscribe to the manner in which Mr. Tiwari seeks to interpret paras 12 and 13 of the Policy.

**27.** To our mind, the import of the said paragraph is clear and categorical. Para 12, no doubt, refers holding of an SCOI in the event the proceedings of the TBO are insufficiently logically addressed the



*reasons for the defective work and shortcomings.* Para 12, therefore, envisages the constitution of an SCOI only apropos the reasons for defect in the MES work and the shortcoming, if any. We deal with the aspect of culpability.

**28.** As such, para 12 does not detract from the effect of para 13 of the instructions which specifically deal with culpability. Para 13 envisages that in order to investigate culpability of military personnel, holding of an SCOI is mandatory. In fact paras 14 and 15 of the Policy go on to expostulate on why the holding of an SCOI is necessary.

**29.** Thus, where an officer is held culpable for the shortcomings or defective work in the MES project, that can be done only after holding of an SCOI. The use of the word, 'mandatory' in clause 13 of the Policy leaves no room for doubt whatsoever.

**30.** The award of displeasure to the respondent is obviously after finding him remiss, even if it is for a limited extent, in the work related to the MES project seeking construction of the CTVS project in the R&R Hospital. The petitioner cannot possibly be held to submit that the award of displeasure / censure was without finding the respondent culpable.

**31.** Clause 13 of the Policy is clear in its requirement that a finding of culpability of an officer, following the decision of the TBO, can only be after holding a SCOI.



32. In so far as Circular of 11 October 2017 is concerned, the applicability of the said Circular to the case of the respondent is itself questionable as the event forming subject matter of the displeasure awarded to the respondent was of the year 2014-2015. Though Mr. Tiwari sought to submit that there was an earlier Circular to the same effect, we do not find any such Circular was even produced before the AFT.

33. That apart, we find that paras 5, 6, 12 to 16, 20, 21 and 27 the Army Policy dated 11 October 2019 was specifically with respect to MES work. They, therefore, would prevail over any other policy where the alleged lapse pertains to MES work.

34. In so far as the decision in *Major A. Hussain* is concerned, it is clear that it is completely distinguishable on facts. That was a case in which the culpability of the officer concerned had been decided by a General Court Marshall in which complete opportunity had been given to him. Besides, the Supreme Court was dealing with Rule 177 of the Army Rules and the issue of whether once the officer had been found guilty by a General Court Marshall, a further Court of Inquiry was required to be conducted.

35. We are not concerned with any such situation in the present case. As such, the judgment in *Major A. Hussain* is clearly not applicable in the facts of the present case.



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**36.** In view of the aforesaid discussion, we find no such error in the impugned judgment of the Tribunal as would invite interference by us within the limited peripheries of Article 226 of the Constitution of India.

**37.** The writ petition is, accordingly, dismissed.

**C. HARI SHANKAR, J.**

**AJAY DIGPAUL, J.**

**APRIL 28, 2025/aky**

*Click here to check corrigendum, if any*