



2025:DHC:4789-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 7991/2025, CM APPL. 35033/2025 & CM APPL. 35034/2025

948999 A CORPORAL BSK PAVANPetitioner
Through: Mr. Y Venugopal, Adv.

versus

UNION OF INDIA AND ORSRespondents
Through: Ms Saroj Bidawat, SPC for UOI

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE AJAY DIGPAUL

JUDGMENT (ORAL)

% **29.05.2025**

C. HARI SHANKAR, J.

1. The petitioner moved the Armed Forces Tribunal by way of OA 927/2025, challenging the show cause notice dated 22 January 2025 issued to the petitioner, by which the petitioner was required to show cause as to why he be not dismissed from service in terms of Section 20 (3) of the Air Force Act 1950 read with Rule 18 of the Air Force Rules 1969 for the acts of alleged misconduct set out in para 4 of the show cause notice.

2. For ready reference, we may reproduce para 4 of the show cause notice dated 22 January 2025 thus:

“4. AND WHEREAS, the AOC-in-C WAC, IAF, being the competent authority and after considering the matter in its entirety, has apportioned the following counts of blameworthiness upon you on the basis of material available on record of the C of I



proceedings:

(a) After being enrolled in the /AF on 26 Sep 12 and while being on the posted strength of 46 Wg (Na/), during the year 2014, obtained civil passport bearing Serial Number M3808068, issued by passport office, Visakhapatnam, Andhra Pradesh without obtaining No Objection Certificate from AOC 46 Wg contrary to Para 3 of AFO 0912001 (procedure for acquiring 'No Objection Certificate' for obtaining Civil Passport).

(b) After being enrolled in the IAF on 26 Sep 12 and while being on the posted strength of 46 Wg (Na/), travelled to a foreign country (Malaysia) from 29 Apr 2016 to 09 May 2016, without obtaining permission from competent authority contrary to Para No. 7 and 8 of AFO-6512015.

(c) On 21 Aug 22, at Air Force Station Barwala c/o Air Force Station Chandigarh, mislead Air Force authorities about credentials of unauthorized guest Mr Parneet Kaur by giving 2 to 3 statements of different identity of same person to 921285-S .Sgt Major Singh in violation of good order and Air Force discipline, specified under Section 65 of AF Act 1965 and other connected provisions.

(d) After being enrolled in the /AF on 26 Sep 12 participated in business/trade activities (Futures & Options segment of Stock market) and related activities contrary to Para 587 of the Regulations for the Air Force, 1964.

(e) While being a person subject to Air Force Act 1950, installed banned software like Daillyhunt, Snapchat etc .on his personal ICT device of brand Realme Model No RMX3360 SI No. B370BOF9, contrary to Air HQIS 2044712113/Al(S) dated 15 Jul 20 (policy on cyber security/usage of social media in IAF)."

3. In the OA, the petitioner also incorporated a prayer for interim relief, thus:

"That the Applicant prays before the Hon'ble Tribunal to pass directions to the respondents to not pass any orders of punitive nature in furtherance of the-Show Cause Notice 22.01.2025 till disposal of this OA, otherwise the Applicant will be subjected to irreparable loss."



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4. By the following order dated 2 May 2025, the learned AFT has rejected the application for interim relief:

“The counter affidavit of the respondents with the response also to the interim prayer made by the applicant be filed without default within a period of three weeks, as prayed.

2. The applicant seeks grant of interim restraint as prayed vide Para 9 of the OA as observed vide order dated 07.04 2025, on 07.04 2025, the matter had been re-notified for consideration of the interim prayer made by the applicant with it having been observed to the effect that all administrative action taken by the respondents would be subject to the outcome of the present OA.

3. It is reiterated that all administrative action, if any, taken by the respondents pursuant to the impugned order dated 22.01.2025 at page 60 shall be subject to outcome of the OA. Without any observations on the merits or demerits of the OA and the response, if any, filed by the respondents thereto as well as the subject matter of the show cause notice 22.01.2025, in view of the averments made in Para 4e thereof which read to the effect: -

“4(e) While being a person subject to Air Force Act 1950, installed banned software like Dailyhunt, Snapchat etc on his personal ICT device of brand Realme Model No. RMX3360 SI No. B370B0F9, contrary to Air HQ/S 20447/2/13/AI(S) dated 15 Jul 20 (policy on cyber security/usage of social media in IAF).”

we are not inclined to grant any interim restraint as prayed by the applicant.

4. The matter be re-notified on 30.05.2025

Copy of this order be given ‘Dasti’.”

5. Aggrieved by the aforesaid order, the petitioner has approached this Court.

6. We have heard Mr. Y Venugopal, learned Counsel for the petitioner.



7. The decision on whether to grant or reject interim relief is purely within the discretion of the Tribunal. Discretionary orders are ordinarily not to be interfered with, especially while exercising certiorari jurisdiction under Article 226 of the Constitution of India. The parameters of certiorari jurisdiction are well set out in the following passages from the judgment in **Syed Yakoob v K.S. Radhakrishnan**¹:

“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 that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned*

¹ AIR 1964 SC 477



*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**², **Nagandra Nath Bora v Commissioner of Hills Division and Appeals Assam**³ and **Kaushalya Devi v Bachittar Singh**⁴).*

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)

² (1955) 1 SCR 1104

³ (1958) SCR 1240

⁴ AIR 1960 SC 1168



8. While dealing with power of an appellate court to deal with discretionary interlocutory orders passed by courts below, the Supreme Court has held thus, in ***Wander Ltd v Antox India (P) Ltd***⁵:

“14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles Gajendragadkar, J. in ***Printers (Mysore) Private Ltd. v Pothan Joseph***⁶:

“... These principles are well established, but as has been observed by Viscount Simon in ***Charles Osenton & Co. v Jhanaton***⁷ ‘...the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case’.”

9. It goes without saying that the power of interference under Article 226 would be even more circumscribed than the power of interference in appeal.

⁵ 1990 Supp SCC 727

⁶ AIR 1960 SC 1156

⁷ 1942 AC 130



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10. It is only, therefore, where the courts find that the exercise of discretion in the order under challenge is manifestly perverse or suffering from patent illegality that the Court would interfere under Article 226.

11. Given the nature of the allegations in the show cause notice – of which we are expressing no opinion, as they are subject matter of challenge before the Tribunal – we cannot fault the Tribunal for not treating the case as one meriting any interim protection.

12. The Tribunal has already sufficiently protected the petitioner by making any orders passed on the basis of the show cause notice subject to the outcome of the OA.

13. We, therefore, do not find that this case calls for interference under Article 226 of the Constitution of India.

14. The petition is accordingly dismissed in *limine*.

15. The interim application also stands dismissed.

C. HARI SHANKAR, J.

AJAY DIGPAUL, J.

MAY 29, 2025

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[Click here to check corrigendum, if any](#)