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

% Date of Decision : 05.01.2026

\+ W.P.(C) 40/2026
UNION OF INDIA THROUGH SECRETARY
MINISTRY OF DEFENCE & ORS. .....Petitioners
Through: Mr. Nirvikar Verma, SPC and Mr. Mritunjay Jha.

versus

AIR CMDE ASHOK KUMAR UPADHYAYA RETD 17757 T
.....Respondent
Through: Mr. Praveen Kumar, Adv.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

V. KAMESWAR RAO, J. (*ORAL*)

CM APPL. 88/2026 (Exemption)

1. Exemption is allowed, subject to all just exceptions.

2. The application stands disposed of.

W.P.(C) 40/2026, CM APPL. 87/2026

3. This writ petition lays a challenge to an order dated 21.03.2023 passed by the learned Armed Forces Tribunal, Principal Bench, New Delhi (Tribunal) in Original Application (OA) No.859/2020 whereby the Tribunal has allowed the OA filed by the respondent herein by giving the following directions:-

> *"5. In view of the aforesaid judicial pronouncements and the parameters referred to above, the applicant is*

entitled for disability element of pension in respect of disability 'Hypertension'. Accordingly, we allow this application holding that the applicant is entitled to disability element of pension @30% rounded off to 50% with effect from the date of his discharge in terms of the judicial pronouncement of the Hon'ble Supreme Court in the case of Union of India Vs. Ram Avtar (Civil Appeal No. 418/2012), decided on 10.12.2014.

6. The respondents are thus directed to calculate, sanction and issue the necessary PPO to the applicant within a period of three months from the date of receipt of copy of this order and the amount of arrears shall be paid by the respondents, failing which the applicant will be entitled for interest @6% p.a. from the date of receipt of copy of the order by the respondents."

4. The facts as noted from the record are the respondent was commissioned in the Air Force on 21.12.1984. He was released from service on attaining the age of superannuation on 31.01.2019 with permanent low medical category A4G-2P. The Release Medical Board (RMB) of the respondent was held at Air Force Station, New Delhi on 08.08.2018. He was found to be in low medical category having the disability of Primary Hypertension. It is noted that the RMB opined that the disability of the respondent is neither attributable nor aggravated by military service.

5. The only submission made by the learned counsel for the petitioners is that the finding of the Tribunal that the disability was attributable to the military service is clearly erroneous inasmuch as it is not necessarily that hypertension is caused due to military service only. In other words, the same can be caused due to reasons other than military service. It is also his submission that the Tribunal has overlooked the Entitlement Rules 2008

which govern the attributability/aggravation and no longer permit a blanket presumption in favour of the claimant. He states that the Tribunal has erred in allowing the respondent's claim for disability pension despite the opinion of the RMB.

6. On the other hand, the learned counsel for the respondent has drawn our attention to a judgment of the co-ordinate Bench of this Court in the case of ***Union of India and Ors. v. HFO Satyvir Singh (Retd.), 2025:DHC:6640-DB*** wherein in paragraph 4 onwards, the Court on identical issue has held as under:-

> *"4. The respondent was released in Low Medical Category on his being found to be suffering from Primary Hypertension. From the record, including the proceedings of the Release Medical Board, the following facts emerged:*
>
> ***12.*** *The respondent had served in the Indian Air Force for over 38 years 8 months before he was diagnosed as suffering from Primary Hypertension.*
>
> *(ii) The respondent, in his self-declaration, specifically declared that he had not been suffering from Primary Hypertension prior to joining the Indian 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 suffered by the respondent has not been attributable to military service, as entered by the RMB reads thus:*
>
> *"Primary Hypertension (Old): Onset in peace and*

served in peace only prior to (up to one year and after onset).

(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 individuals own negligence or misconduct (If Yes, in what way?) No

(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), 2025 SCC OnLine Del 2355 observed thus:

> *"12. Para 43 of the Chapter VI of the GMO 2008, vivisected into its individual components, specifies that, while dealing with hypertension,*
>
> ***12.** the RMB is required to determine whether the hypertension is primary or secondary,*
>
> *(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) The RMB has certified the respondent as suffering from 30% disability on account of Primary Hypertension, 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. 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, AIR 1964 SC 477 :

"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 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, (1954) 2 SCC 881 Nagandra Nath Bora v Commissioner of Hills Division and Appeals Assam, IR 1958 SC 398 and Kaushalya Devi v Bachittar Singh, AIR 1960 SC 1168.

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)

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, 2025 SCC OnLine SC 895 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 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 Crystallized 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 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.

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

(emphasis supplied)

7. That apart the Tribunal has relied upon the judgment of the Supreme Court in the case of ***Dharamvir Singh v. Union of India and Others, 2013 (7) SCC 316*** wherein, the Supreme Court in paragraph 28 has stated as under:-

> *"28. A conjoint reading of various provisions, reproduced above, makes it clear that:*
> *(i) Disability pension to be granted to an individual who is invalidated service which on account of from a*

disability is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over. The question whether a disability is attributable or aggravated by military service to be determined under "Entitlement Rules for Casualty Pensionary Awards, 1982" of Appendix-II (Regulation 173).

(ii) A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service. (Rule 5 r/w Rule 14(b)].

(iii) Onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has α right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally. (Rule 9).

(iv) If a disease is accepted to have been as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions the circumstances were due of duty military service. [Rule 14(c)].

(v) If no note of any disability or disease was made at the time of individual's acceptance for military service, α disease which has led to an individual's discharge or death will be deemed to have arisen in service [14(b)].

(vi) If medical opinion holds that the disease could not have been detected on medical examination prior to acceptance for service and that disease will not be deemed to have arisen during service, the Medical Board is required to state the reasons. [14(b)]; and

(vii) It is mandatory for the Medical Board to follow the guidelines laid down in Chapter-II of the "Guide Medical (Military Pension), 2002 "Entitlement to General Principles", including paragraph 7,8 and 9 referred to above."

8. That apart the Tribunal has also referred to the amendment to Chapter VI of the 'Guide to Medical Officers (Military Pension), 2008' wherein para 43 reads as under:-

> *"43. Hypertension consideration should be to determine whether the hypertension is primary or secondary. If (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 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 to stressful different individuals situations. Primary hypertension will be considered aggravated if it occurs while serving in Field areas, HAA, CIOPS areas or prolonged afloat service."*

9. In substance, the Tribunal held that the hypertension could have resulted because of the rigorous military training and associated stress and strain of the service.

10. The above judgment of this Court in ***HFO Satyvir Singh (Retd.) (supra)*** has referred to the recent judgment of the Supreme Court in ***Bijender Singh v. UoI, 2025 SCC OnLine SC 895.*** The conclusions of which have been reproduced by us. In the said judgment, the Supreme Court has clearly held that if there is no note or report of the medical board, at the time of entering into the service that the member suffered from any particular disease, the presumption would be that the member got infected

the same disease because of the military service. Therefore, the burden of proving that the disease is not attributable to or aggravated by military service rest entirely on the employer. It is also held that the employer is required to furnish the reasons for saying that the disease was neither attributable nor aggravated by the military service.

11. In the present case, the RMB says that onset of the Primary Hypertension was in June 2015, when the respondent was posted in peace area. Prior to onset, the individual served in peace station. There was no delay in diagnoses nor close time association with stress/strain or dietary compulsion of the field -

CI Ops/HAA, hence NANA in terms of para 43, Chapter VI, GMO 2002-amendment 2008.

12. The above opinion, does not give any reason for the respondent to get the disability for non-military service reason. In effect, a Coordinate Bench of this Court in the case of ***Union of India v. Col. Balbir Singh (Retd.) and other connected matters, 2025:DHC:5082-DB*** has in paragraphs 64,65, 71 and 79 held as under:-

> *"64. From the above-extracted paragraphs of the GMO, 2008, it is evident that the GMO recognises Ischaemic Heart Disease (IHD) as a spectrum encompassing asymptomatic IHD, chronic stable angina, unstable angina, acute myocardial infarction, and sudden cardiac death, all of which arise as a result of atherosclerosis. Prolonged stress and strain accelerates atherosclerosis by triggering neurohormonal mechanisms and autonomic storms. The medical understanding of IHD, as extracted from the GMO, 2008, highlights that the challenges of service in field and high-altitude areas, apart from involving physical hardship, also encompass*

significant mental stressors. The solitude and prolonged separation from family create an environment of persistent mental strain, often compounded by other additional burdens such as concerns regarding the security of one's family and familial responsibilities. Furthermore, the constraints of compulsory group living inherently curtail personal freedom of activity.

65. Furthermore, from Paragraph 43 of the GMO, 2008, it is evident that cases of hypertension may arise due to the differing individual responses to stressful situations and can occur after prolonged and frequent spells of service in the field, high altitude, or operational areas.

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71. Moreover, it must be noted that lifestyle varies from individual to individual. Therefore, a mere statement that a disease is a lifestyle disorder cannot be a sufficient reason to deny the grant of Disability Pension, ***unless*** *the Medical Board has duly examined and recorded particulars relevant to the individual concerned.*

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79. Considering all the factors together, it is evident that the mere fact that the onset of the disease occurred during a peace area posting is not sufficient to negate the cumulative stress of military service, which can contribute to the development of diseases such as Primary Hypertension, IHD etc. ***The RMB's opinion that the onset took place in a peace station and therefore the disease is not attributable to or aggravated by military service cannot be sustained****.*

…

(Emphasis Supplied)

13. So, it follows that the RMB's opinion that the onset of the disease took place in peace station and therefore, the disease is not attributable nor aggravated by military service, is not sustained in the aforesaid case.

14. In view of our aforesaid discussion, we are of the view that the Tribunal has rightly held that the respondent herein is entitled to disability element of pension because of disability, "Primary Hypertension". On such a finding, the Tribunal allowed the disability element of pension at 30% rounded off to 50% with effect from the date of discharge of the respondent.

15. In view of the conclusion drawn by the Tribunal, more so, by relying upon the judgment of the Supreme Court in ***Union of India v. Ram Avtar, Civil Appeal No. 418/2012, decided on 10.12.2014***, we are of the view that the Tribunal is justified in allowing the OA. As the writ petition lacks merits, we dismiss the same along with pending application.

V. KAMESWAR RAO, J

MANMEET PRITAM SINGH ARORA, J

JANUARY 05, 2026/sr