



2025:DHC:3508-DB



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

Date of decision: 07.05.2025

+ LPA 36/2025

CANARA BANK & ORS.

.....Appellants

Through: Mr. Puneet Taneja, Sr. Adv.
with Mr. Manmohan Singh
Narula, Mr. Amit Yadav and
Mr. Anil Kumar, Advs.

versus

RAJ KUMAR WADHERA & ORS.

.....Respondents

Through: Mr. Udian Sharma, Ms. Aarzoo
Aneja, Mr. Akshaya
Jebakumar, Mr. Manav Mitra,
Mr. Sahil Saraswat and
Ms. Harsha Sadhwani Advs. for
R-1.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE RENU BHATNAGAR

NAVIN CHAWLA, J. (ORAL)

CM APPL. 2421/2025

1. For the reasons stated in the application and with the consent of learned counsel for the respondents, the delay of 14 days in filing the appeal is condoned.

2. The application stands disposed of.

LPA 36/2025 & CM APPL. 2420/2025

3. This appeal has been filed by the appellants, challenging the Judgment dated 08.10.2024 passed by the learned Single Judge in



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W.P.(C) No. 12359/2021, titled ***Raj Kumar Wadhera v. Canara Bank & Ors.***, disposing of the writ petition filed by the respondent no. 1 herein with the following direction:

“11. Accordingly, this writ petition is disposed of holding that there is no infirmity with the impugned order dated 30.07.2021 passed by the Commissioner Disability as also holding that Petitioner cannot be declared as a Person with Disability under the 1995 and/or the 2016 Acts. Insofar as an amount of Rs.9,01,327/- is concerned, the same shall be credited to the account of the Petitioner within a period of eight weeks from the date of receipt of this order. It will, however, be open to the Bank to take recourse to appropriate legal remedies to initiate action for the alleged unauthorized leave, if so advised and take action as per law.”

4. Giving a brief background in which the present appeal arises, the respondent no. 1 joined the Syndicate Bank, which later merged with the appellant no. 1, as a Clerk at the Delhi Regional Office under the general category on 05.11.1984.

5. Thereafter, in the year 1994, he was admitted to the All India Institute of Medical Sciences (hereinafter referred to as, ‘AIIMS’), where he was later diagnosed with a rare cardiopulmonary disease, namely Eisenmenger Syndrome.

6. In view of the said condition, AIIMS issued a Disability Certificate dated 22.02.2017 to the respondent no. 1, which reads as under:

“Disability Certificate

This is the reference to the request dated 24th April 2016 by Mr. Raj Kumar Wadhera 53



yrs/male son of Lt. Sh. V.P. Wadhera, to the office of Medical Superintendent, AIIMS, New Delhi, regarding issuance of the disability certificate. Mr. Raj Kumar Wadhera is registered in Cardiology OPD via UHID no.101653064 & CV No. 2012/014/20494. He is suffering from Atrio-Ventricular-Septal defect with severe pulmonary hypertension. He is presently in NYHA class III. On clinical examination he has feature of severe pulmonary hypertension and is not in Heart Failure. A recent echocardiography shows normal ventricular function His resting arterial saturation is 83%. His clinical condition is inoperable and he is on medical therapy with pulmonary vasodilators.

As per the recommendations from the committee for assessment of disability the issuance of disability certificate for cardiac patients at CTC, AIIMS dated 24th April 2016, he **falls under the category of congenital heart disease disability class 3a (40%-59%).**

The validity of this disability certificate is for a period of two years from the date of issue.”

7. Thereafter, AIIMS issued another Disability Certificate dated 31.10.2019 to the respondent no. 1, which is reproduced herein below:

“Sub: Certificate to the Person with Disabilities

This is in reference to the request dated 03/06/2019 by Mr. Raj Kumar Wadhera 56 yrs/male son of Lt. Sh. V.P. Wadhera to the office of Medical Superintendent, AIIMS, New Delhi regarding issuance of the disability certificate. Mr. Raj Kumar Wadhera is registered in Cardiology OPD via UHID No.101653064 & CV No. 20494/12. He is suffering from Atrio-Ventricular-Septal Defect (AVSD) with severe pulmonary hypertension. He is presently in NYHA class III. On clinical



examination he has feature of severe pulmonary hypertension and is not in Heart failure. A recent echocardiography shows mild LV dysfunction (EF 45-50%). His resting arterial saturation is 70%. His clinical condition is inoperable and he is on medical therapy with pulmonary vasodilators.

As per the recommendations from the committee for assessment of disability the issuance of disability certificate for cardiac patients at CTC, AIMS dated 24th April 2016, he falls under the category of congenital heart disease disability class 3a (40%-59%).

The validity of this disability certificate is for a period of two years from the date of issue.”

8. Due to his aforementioned medical condition and the outbreak of the COVID-19 Pandemic, it was the case of the respondent no. 1 that he could not join his duties for a period starting from 16.04.2020 to 30.09.2021. In the meantime, the appellant issued various notices to the respondent no. 1, calling upon him to join the duty failing which an action under Regulation 19 (1) of the Canara Bank (Officers') Service Regulations, 1979 (hereinafter referred to as, 'the Regulations') shall be taken against him.

9. The plea of the respondent no. 1 that he was covered under the provisions of the Right of Persons with Disabilities Act, 2016, (hereinafter referred to as, 'Disability Act') was also rejected by the appellants *vide* the communication dated 31.03.2021.

10. Aggrieved thereby, the respondent no. 1 approached the respondent no. 2 for the issuance of the Disability Certificate, however, the same was rejected by the respondent no. 2 by an Order



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dated 30.07.2021, which reads as under:

“Case No: 12685/1023/2021

Complainant: Shri Raj Kumar Wadhera
E-mail: <vadera.raju@yahoo.com>

Respondent: The Managing Director & Chief
Executive Officer
Head Office, Canara Bank,
Jeevan Prakash Building
113-I, JC Road, Bengaluru,
Karnataka - 560002
E-mail: <rajakrishnan.r@canarabank.com>

Complaint: Congenital heart disease
disability class 3a (40%-59%)

GIST of the Complaint:

Complainant vide complaint dated 31.03.2021 submitted that he is working as a Manager in E-Syndicate Bank and recently his Bank has been merged with Canara Bank. He further submitted that in 2017, AIIMS had issued a disability certificate of 40%-59% to him (Congenital heart disease disability class 3a (40% - 59%)). He alleged that his department 'Syndicate Bank' did not incorporate this certificate in his HR profile for two years in spite of repeated requests to them.

2. The matter was taken up with the Respondent vide letter dated **07.04.2021** under Section 75 of the RPwD Act, 2016.

3. General Manager, Canara Bank vide letter dated **03.07.2021** inter-alia submitted that as per the certificate issued by AIIMS, Cardio-Neuro Centre, New Delhi - he is suffering from Atrio-Ventricular Septal Defect with severe pulmonary hypertension and said disability is not classified under Specified Disability categories in the RPwD Act, 2016.



4. Complainant vide rejoinder dated **08.07.2021** inter-alia submitted that Bank is challenging the authority of Medical Board constituted by AIIMS and taking decision without referring his case to Medical Board of Canara Bank.

Observation/ Recommendations:

5. After perusal of documents available on record, the Court is in view that disability as mentioned in the disability certificate is not covered under the Rights of Persons with Disabilities Act, 2016. Therefore, no intervention of this Court is warranted in the matter.

6. Case is disposed off.”

11. Consequently, the respondent no. 1 filed the abovementioned Writ Petition, challenging the above order passed by the respondent no. 2, and seeking a declaration that the respondent no. 1 be treated as a ‘person with disability’.

12. In the meantime, as the appellants had deducted an amount of Rs. 9,01,327/- from the dues owned to the respondent no. 1, the respondent no. 1 also prayed for a refund of the said amount along with interest, as well as for the credit of 220 days’ leave in his leave account.

13. As noted hereinabove, the learned Single Judge, by placing reliance on the decision of the Supreme Court in *Nawal Kishore Sharma v. Union of India and Others*, (2021) 4 SCC 487, partially allowed the writ petition *vide* the Impugned Order; the challenge by the respondent no. 1 to the Order dated 30.07.2021 passed by the



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respondent no. 2 was rejected, however, at the same time, the learned Single Judge, finding that the recovery of Rs. 9,01,327/- had been made by the appellants from the respondent no. 1 without issuing any show cause notice or granting him an opportunity of being heard, directed that the said amount be refunded back to the respondent no. 1, within a period of eight weeks from the passing of the Impugned Order; and liberty was granted to the appellants to take recourse to an appropriate legal remedy to initiate action in respect of the alleged unauthorised leave of the respondent no. 1, if so advised, in accordance with law.

14. As far as the finding of the learned Single Judge that the respondent no. 1 cannot be declared as a 'person with disability' under the Disability Act of 1995 or even the 2016 Act, is concerned, the respondent no. 1 has filed an appeal, being LPA No. 297/2025. We shall, therefore, not consider the said issue in the present appeal and leave the question open to be determined in the said appeal filed by the respondent no. 1.

15. Inasmuch as the direction of the learned Single Judge for refunding the amount of Rs. 9,01,327/- to the respondent no. 1, which is under challenge in the present appeal is concerned, the learned senior counsel for the appellants submits that before making the recovery of the said amount, various notices were issued to the respondent no. 1, warning him that in case he does not join the service, appropriate action for recovery under Regulation 19(1) of the Regulations shall be taken against him. He submits that despite such



warnings, the respondent no. 1 did not join the service, therefore, the recovery was made from the respondent no. 1 on 09/10.01.2021.

16. The learned senior counsel for the appellants has also drawn reference to the decision of the Supreme Court in *Col. B. J. Akkara (Retd.) v. Government of India & Ors*, (2006) 11 SCC 709, to contend that as the amount had been wrongly paid to the respondent no. 1, the same was rightly recovered from him.

17. We have perused the notices which have been placed on record by the appellants along with the present appeal in support of the above submissions.

18. Upon query of this Court, the learned senior counsel for the appellants was unable to draw our attention to a single notice that was issued to the respondent no. 1 prior to the actual recovery being made. We also find that the said notices were issued, merely calling upon the respondent no. 1 to join the service, failing which, an action in accordance with law shall be taken against him. These notices did not put him to notice that any recovery shall be made from him.

19. In any case, no enquiry was held against the respondent no. 1 for his alleged unauthorised absence.

20. Furthermore, the effect of his medical condition was certainly not looked into while determining whether he can be declared as being on unauthorised leave.

21. We are not impressed with the plea of the learned senior



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counsel for the appellants that the amount has been wrongly paid to the respondent no. 1, and therefore, the same was rightly recovered from him. The recovery cannot be effected without issuing a notice or without giving an opportunity of being heard to the respondent no. 1.

22. In our view, therefore, the learned Single Judge has rightly directed that the amount of Rs. 9,01,327/- be refunded to the respondent no. 1.

23. We, accordingly, find no merit in the present appeal. The same is dismissed with costs of Rs. 25,000/- to be paid by the appellants to the respondent no. 1. The pending application also stands disposed of as infructuous.

24. At this stage, we have been informed that pursuant to the direction of this Court *vide* Order dated 15.01.2025, the appellants have deposited a sum of Rs. 9,01,327/- with the Registry of this Court. The said amount is directed to be released to the respondent no. 1 along with interest accrued thereon.

NAVIN CHAWLA, J

RENU BHATNAGAR, J

MAY 7, 2025

P/SM/DG

Click here to check corrigendum, if any