

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present :-

The Hon'ble Justice Sujoy Paul

And

The Hon'ble Justice Smita Das De

FMA 1170 of 2025
CAN 1 of 2025

Sri Shyamapada Bouri & Anr.
Vs.
Coal India Limited & Ors.

For the appellants : Mr. Debottam Das, Adv.
Mr. Tirupati Mukherjee, Adv.
Ms. Sumedha Mukhopadhyay, Adv.

For the respondents Nos. 2 to 6 : Mr. Manik Das, Adv.

Heard on : 16.09.2025

Judgment on : 18.09.2025

SUJOY PAUL, J.:

- 1.** This *intra* Court appeal takes exception to the judgment passed in WPA 1744 of 2025 dated 26th June, 2025 whereby the claim of petitioner to declare him as permanent disabled employee (and consequent hope of grant of compassionate appointment for his dependant) is rejected by learned Single Judge.
- 2.** Draped in brevity, the necessary facts for adjudication of this matter are that the appellant born on 25.09.1965 suffered with an ailment which in his opinion amounts to "general physical debility" to a degree which makes him permanently disabled. Therefore, he deserves a declaration of

permanently disabled worker by the respondents and consequently his dependent deserves an employment in terms of Clause 9.4.0 of Chapter IX, 'Social Security' under **National Coal Wage Agreement (NCWA)**.

Appellant's Contention:

3. Learned counsel for the appellant submits that appellant is suffering from a disease which is not curable and employer also granted him long leave for the purpose of taking treatment. The discharge certificate issued by Anand Hospital, the certificate of B.P. Poddar Hospital and Medical Research Ltd., are relied upon for this purpose. The Eastern Coal Fields Ltd. by communication dated 23.03.2020 granted 3 months leave with treatment facility. Likewise, the employer's medical board on 27.05.2022 certified that appellant should continue treatment at Neurology OPD and review is required after 3 months. On 07.11.2022, the employer gave him special leave for a period of 6 months with effect from 29.10.2022 to continue the treatment of the neurologist. The opinion of apex medical board dated 14.02.2024 is relied upon whereby appellant was again given special leave for a period of 3 months with effect from 07.02.2024 to enable him to take treatment. Lastly, document dated 24.05.2024 is referred whereby a medical board of employer granted him special leave to continue treatment of physiotherapy and reappear before the board within 6 months.

Contention of Appellant:

4. Learned counsel for the appellant submits that, it is correct that above medical certificates nowhere contain a finding that appellant is either

permanently disabled or having general physical debility which makes him permanently disabled. However, the appellant appeared before the Bankura Sammilani Medical College and Hospital, Bankura (WB). The specialist of the said hospital issued him “disability certificate” dated 26.06.2025 and certified that appellant is suffering from CVA Weakness in all four limbs. He has 100 per cent disability and the nature of certificate is permanent as per guidelines issued under the **Right of Persons with Disabilities Act, 2016**. In view of this document, learned counsel for the appellant submits that he may be directed to be examined by an independent expert body so that if he is covered by Clause 9.4.0, his dependent may get the benefit of compassionate appointment.

5. The learned counsel for the appellant by minutely reading Clause (i) and (ii) of 9.4.0 of NCWA strenuously contended that both the Clauses are separate and independent. Since appellant’s case is covered by Clause (ii), he is entitled to get the benefit of 9.4.0.

Contention of employer:

6. Learned counsel for the employer submits that the appellant was examined on several occasions by the coal company. Right from 2016, upon examination of appellant, the board found that his condition does not fall within the ambit of ‘permanent disability’. On 21.09.2018, he was communicated about the outcome of such examination and the opinion of employer that he is “fit for duty”. He did not challenge the same. A subsequent document i.e. “disability certificate” dated

26.06.2025 issued by medical college and hospital, will not strengthen petitioner's contention.

7. The judgment of learned Single Judge was supported by contending that since no clinching evidence was produced before the learned Single Judge, there is no infirmity in the judgment and the finding that appellant failed to show that he was permanently disabled. This Court cannot assume the role of experts and take a different view. Lastly, he submits that both the Clause (i) and (ii) of 9.4.0 of NCWA are to be read as a whole and cannot be separated from each other.
8. The parties confined their arguments to the extent indicated above. We have heard the parties at length and perused the records.

Analysis:

9. Before dealing with rival contentions advance at the bar we deem it apposite to refer to the relevant Clause of the NCWA which reads thus:

“9.4.0 Employment to one dependant of a worker who is permanently disabled in his place

- (i) The **disablement** of the worker concerned should arise from injury or disease be of a permanent nature resulting into loss of employment and it should be so certified by the Coal Company concerned.
- (ii) In case of disablement arising out of **general physical debility** so certified by the Coal Company, the employee concerned will be eligible for the benefit under this clause if he/she is upto the age of 58 years. The term **‘general physical debility’** would mean deficiency of a workmen **due to any disease or other health reason** leading to his/her disablement to perform his/her duties regularly and/or efficiently.”

(Emphasis Supplied)

10. Clause (i) of the 9.4.0 of NCWA deals with such injury or disease which is of permanent nature and results into loss of employment. Whereas Clause (ii) talks about “general physical debility”, which leads to disablement. In our opinion, in this agreement, the agreement makers have consciously prescribed two different clauses, namely, (i) and (ii). Interestingly, in Clause (ii) the “general physical debility” was defined which means deficiency of the workmen due to any disease or other health reason leading to disablement. Although the word, the “disease” is common in Clause (i) and (ii), the agreement makers in their wisdom decided to put them in the shape of two different Clauses.

11. A careful reading of Clause 9.4.0 (i) and (ii) does not lead to the conclusion that the both are same. Instead, in our opinion, Clause (i) deals with general disablement and injury whereas Clause (ii) deals with such disablement which is arising out of “general physical debility”. The word ‘debility’ is also defined in different dictionaries.

*“Merriam-Webster Dictionary defines **“debility”** as weakness, infirmity.*

*Oxford learner’s dictionaries define **“debility”** as physical weakness, especially as a result of illness.*

*Collins English Dictionary defines **“debility”** as a weakness of a person’s body or mind, especially one caused by an illness.”*

12. In our Judgment, the Clause 9.4.0 of NCWA is a beneficiary provision and therefore, it must be interpreted liberally. In other words, the beneficent provision must be read in a broader perspective with a view to provide benefit to the person for whom provision is brought in the statute/agreement without causing violence to the language employed in

the provision. The principle of liberal construction of beneficial legislation has to be applied without rewriting or doing violence to the enactments for resolving an ambiguity. **(See: 43. Steel Authority of India Ltd. v. National Union Water Front Workers, AIR 2001 SC 3527, pp. 3535, 3539: (2001) 7 SCC 1)**

13. Thus in our view, the Clause (i) and Clause (ii) are separate and impediment of age of 58 years is applicable only in cases of “general physical debility”.

14. If we examine the Judgment of Learned Single Judge in WPA No. 1744 of 2025 decided on 26th June, 2025 on the basis of medical documents filed along with writ petition, no fault can be found in the Judgment of Learned Single Judge. In none of the medical documents which were filed with the writ petition, any finding was recorded by the medical board of Coal Company concerned that appellant either suffers from “general physical debility” whose degree brings it within the ambit of permanent disablement or the disablement of appellant which is arising out of any injury or disease. To this extent, we are sure that Learned Single Judge has taken a correct and plausible view and for this reason no interference is warranted.

15. This appeal is based on a “disability certificate” dated 26th June, 2025 which reads thus:-

“Disability Certificate
Bankura Sammillani Medical College & Hospital
Lokepur, PO-Kenduadihi, Bankura Town
Bankura, West Bengal, 722102

Certificate/UDID No.WB3050520650032186

Date: 26/06/2025

*This is to certify that I/We have carefully examined **Shyama Pada Bouri** Son of **Ramdas Bouri**, Date of Birth **25/09/1965**, Gender **Male**, Registration No.**1930/50000/0250/60023024**, Resident of **C/o Lakshmikanta Bouri, Mukundapur Colliery, Siduli, Andal, Paschim Bardhaman, West Bengal-713322** whose photograph is affixed above, and I am/we are satisfied that:*

- (A) **He** is a case of: **Locomotor Disability**.*
 - (B) Name of affected body part: **ALL FOUR LIMBS**.*
 - (C) The diagnosis in his case is **CVA WEAKNESS ALL FOUR LIMBS**.*
 - (D) **He** has **100%** (in figure) **one hundred** percent (in words) disability and the nature of certificate is **Permanent** as per the guidelines for the purpose of assessing the extent of specified disability in a person included under the Rights of Persons with Disabilities Act, 2016 notified by Government of India vide **S.O.1338(E)** dated **12/03/2024**.*
- Signature/Thumb impression of the Person with Disability:*

Signature of notified Medical Authority Members:

*Bankura Sammilani Medical College & Hospital
Lokepur, PS-Kenduadihi, Bankura Town
Bankura, West Bengal, 722102”
(Emphasis Supplied)*

- 16.** The strict principles of CPC are not applicable in writ jurisdiction. This ‘disability certificate’ was issued later on to the appellant. This document which may have a material impact on the case is gathered by appellant only on 26th June, 2025. A conjoint reading of all the medical documents filed with the writ petition at least show that appellant is suffering from an ailment for which employer gave him long leave on several occasions

for undergoing treatment even for a long period of six months. Thus it is beyond doubt that appellant is suffering from an ailment. It is a matter of common knowledge that ailment, by efflux of time may become more grave or may be cured to some extent.

17. It is important to mention that as per Clause 9.4.0 of NCWA, the worker suffering from “general physical debility” is entitled to get the benefit only up to the age of 58 years. As the appellant will be completing his 58 years only on 24th September, 2025, the continuous ailment and certification of such ailment coupled with the long leave granted by the employers *prima facie* show the health condition of the appellant. The “disability certificate” dated 26th June, 2025 gives strength to appellant’s contention that he perhaps suffers from a “general physical debility” whose degree brings it within the ambit of ‘permanent disablement’. In fact the above certificate certify the same by giving finding that “*nature of certificate is permanent*”. The new documents filed for the first time in this appeal throw light on the germane issue and are relevant for pronouncing judgment by this Court. In our opinion, for this consideration, Clause (b) of Order 41 Rule 27 can be invoked. The Apex Court in **(2015) 1 SCC 677 (Wadi vs. Amilal & Ors.)** opined as under:

“5. If it feels that pronouncing a judgment in the absence of such evidence would result in a defective decision and to pronounce an effective judgment admission of such evidence is necessary, clause (b) enables it to adopt that course. Invocation of clause (b) does not depend upon the vigilance or negligence of the parties for it is not meant for them. It is for the appellant to resort to it when on a consideration of the material or record it feels that admission of additional evidence is necessary to pronounce a satisfactory judgment in the case.”

(Emphasis Supplied)

It was further held :

“6. The document in question would throw light on the germane issue and is, therefore, necessary for pronouncing judgment in the case on the question whether remand of the case was justified.”

(Emphasis Supplied)

In the light of this Judgment, we have no hesitation to consider the new documents for the purpose of pronouncing the judgment.

This judgment of the Supreme Court has been followed in the ***Surjit Singh vs. Gurwant Kaur, (2015) 1 SCC 665*** and ***State of Telengana vs. B. Rangawami, (2022) 16 SCC 264***.

- 18.** Thus, *in the peculiar facts and circumstance of this case*, we deem it proper to interfere in the matter and direct the appellant to appear before an independent expert body for the purpose of examination of his health condition. Accordingly, we direct that appellant shall appear before the superintendent/head of All India Institute of Medical Science (AIIMS), Nadia, West Bengal on 27th or 28th of September, 2025 at 11.00 am. The said authority shall depute the competent doctors to examine the appellant and issue a certificate about his disability on the same day. In turn, appellant shall submit the said certificate before his employer. On the basis of the said certificate, the employer shall take a decision whether appellant is entitled to get the benefit of Clause 9.4.0 of NCWA. Such decision shall be taken within 30 days from the date of submission of said certificate. Needless to emphasize that if appellant was held to be permanently disabled worker, the benefit arising out of Clause 9.4.0 shall be made available to his dependent within the aforesaid time. It is made

clear that his Court has not expressed any conclusive opinion on the aspect of disablement of the appellant which shall be assessed by the AIIMS. The appeal is **partly allowed** to the extent communicated above. Consequently, the order of Learned Single Judge stands modified.

- 19.** The Registry of this Court shall communicate of this Judgment to head of the AIIMS forthwith, in any case during the course of this week.

(SUJOY PAUL, J.)

I agree.

(SMITA DAS DE, J.)