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

\+ W.P.(C) 14493/2021

MANISH TIWARI .....Petitioner

Through: Mr. T.N. Saxena, Mr. Shiv K. Tiwari & Mr. Aakash Shankar, Advocates.

versus

BOARD OF DIRECTOR, PUNJAB AND SIND BANK, NEW DELHI .....Respondent

Through: Mr. Som Raj Choudhury & Ms. Shrutee Aradhana, Advocates.

CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN

O R D E R

% **12.03.2025**

1. The petitioner has filed this petition under Article 226 of the Constitution, challenging the termination of his services in the respondent-Bank on 24.09.2021, and seeking payment of salary and allowances from 21.08.2014 until today.

2. The petitioner was appointed to the post of Probationary Officer in the Bank in the Junior Management Grade-1 on 31.10.2012, and was posted at the Burj Sidhwan in Bhatinda, Punjab.

3. The case of the petitioner is that he joined his duties, but fell ill during the probationary period. On 21.06.2014 [wrongly typed as 21.08.2014 in the writ petition], it is contended that the petitioner was found in an unconscious state by his landlord and admitted to a hospital

in Bhatinda. He underwent treatment for about two months, after which he shifted to his parents' home in Mathura.

4. The principal issue in dispute is as to whether the Bank has validly terminated the petitioner's services on 24.09.2021.

5. The petitioner's case is that he acquired a disability while employed with the Bank, and is entitled to the protection of Section 20(4) of the Rights of Persons with Disabilities Act, 2016 ["RPwD Act, 2016"], which reads as follows:-

> "*20. Non-discrimination in employment.-*
> *(4) No Government establishment shall dispense with or reduce in rank, an employee who acquires a disability during his or her service:*
> *Provided that, if an employee after acquiring disability is not suitable for the post he was holding, shall be shifted to some other post with the same pay scale and service benefits:*
> *Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.*"

6. Mr. T.N. Saxena, learned counsel for the petitioner, submits that the Bank was aware of the petitioner's medical condition at all times, and medical records and documents, of 430 pages in total, had been submitted by the petitioner and his father to the Bank. The petitioner has also placed on record some of the said documents, including a medical certificate dated 06.01.2020.

7. During the pendency of the writ petition, the Chief Medical Officer, Mathura, has also issued a disability certificate, which certifies that the petitioner has a locomotor disability and is permanently physically impaired to the extent of 70%.

8. Mr. Saxena relies upon a Division Bench decision of this Court in

Shri Pawan Kumar vs. Delhi Transport Corporation [W.P.(C) 4261/2013, decided on 16.01.2025], wherein the benefit of a *pari materia* provision, i.e. Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 ["the 1995 Act"], was given to an employee of the Delhi Transport Corporation, who like the petitioner herein, was also on probation. Mr. Saxena points out that Department of Personnel and Training has issued an Office Memorandum dated 25.02.2015, which provides that a disabled government servant, who is not fit to return to duty, shall be adjusted as per the second proviso to Section 47 of the 1995 Act. The said proviso is in the same terms as the second proviso to Section 20(4) of the RPwD Act, 2016.

9. Having heard learned counsel for the parties, I am of the view that the termination letter dated 24.09.2021 fails to consider the aforesaid aspects. The Bank's contention is that the petitioner remained absent from service since 21.06.2014, and without pay since 21.08.2014, leading to the consequence that his services have been terminated with one month's notice, as he was on probation. In the very same letter, however, reference is made to ten letters from the petitioner and his father with regard to his medical condition and request to rejoin the services of the Bank. The communication does not reflect due consideration of the statutory scheme under the RPWD Act, 2016, and the documents referred to herein. However, it must be noted that many of those documents were admittedly not before the Bank at the time; indeed, even the disability certificate has been acquired only thereafter.

10. In these circumstances, I am of the view that appropriate course is

for the Bank to reconsider the issue holistically, in light of the statutory provisions, the applicable judgments, and any relevant Office Memorandums, as also the factual circumstances relating to the petitioner's illness and consequent disability. As many documents have been placed before the Court for the first time, it is appropriate that the Bank should take a decision afresh, after considering all these factors, instead of embarking upon a judicial assessment at the first instance.

11. For the aforesaid reasons, the writ petition is disposed of with the following directions:-

a) The Bank's letter dated 24.09.2021, terminating the petitioner's services, is set aside.

b) Although the petitioner had filed an appeal against the termination, it is submitted by the Bank that no appeal is maintainable at the instance of a probationary employee. The Bank is, therefore, not required to take any further steps in the appeal.

c) The writ petition and documents, which have been placed on record with the writ petition, will be considered by the Bank, in addition to the communications and the documents previously submitted by the petitioner and his father. A fresh decision will be taken within a period of twelve weeks from today, in accordance with law.

d) If the Bank requires any further clarification or documents from the petitioner, or seeks his examination by a Medical Board constituted by it, Mr. Saxena states that the petitioner will be agreeable to the same, at the cost of the Bank.

e) Upon consideration of the case, the Bank will also take a decision in accordance with law, as to the consequential benefits, if any, to be paid to the petitioner.

12. It is made clear that this Court has not made any final observation with regard to the petitioner's entitlement to the relief sought. The Bank is expected to consider the matter in accordance with law, and take a reasoned decision, consistent with the aforesaid directions.

13. The writ petition stands disposed of with these directions.

PRATEEK JALAN, J

MARCH 12, 2025
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