



**IN THE HIGH COURT OF PUNJAB & HARYANA AT  
CHANDIGARH**

**1. CWP-34752-2023 (O&M)**

**Sohan**

**... Petitioner**

**Versus**

**The State of Haryana and others**

**...Respondents**

**2. CWP-37099-2025 (O&M)**

**Devender Aggarwal**

**... Petitioner**

**Versus**

**State of Haryana and others**

**...Respondents**

**3. CWP-37156-2025 (O&M)**

**Naveen Kumar**

**... Petitioner**

**Versus**

**State of Haryana and others**

**...Respondents**



**Reserved on: 29.01.2026**  
**Pronounced on: 27.02.2026**  
**Uploaded on: 28.02.2026**

*Whether only the operative part of the judgment is pronounced ?*      *No*  
*Whether full judgment is pronounced ?*      *Yes*

**CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**

Present: Mr. Shalender Mohan, Advocate,  
Dr. Purushotam, Advocate and  
Mr. Tarun Kumar, Advocate  
for the petitioner (in CWP-34752-2025).

Mr. Jasbir Singh, Advocate  
for the petitioner (in CWP-37099-2025).

Mr. Ajit Singh, Advocate  
for the petitioner (in CWP-37156-2025).

Mr. Vikrant Pamboo, Addl. AG, Haryana.

Mr. Prince Singh, Advocate  
for respondent No.3 (in CWP-34752-2025).

Mr. Sukhdeep S. Parmar, Advocate  
for respondent No.2 (in CWP-37099-2025) and  
for respondent No.3 (in CWP-37156-2025).

Mr. Gurnoor S. Sandhu, Advocate  
for respondent No.3 (in CWP-37099-2025).

Mr. Randeep Singh Dhakla, Advocate  
for applicant-proposed respondent No.3  
(in CM-1269-CWP-2026 in CWP-37156-2025).

Ms. Sheena Dahiya, Advocate for  
Mr. Kanwal Goyal, Advocate  
for respondent-HPSC (in CWP-34752 & 37156-2025).

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**HARPREET SINGH BRAR, J.**

1. This common judgment shall dispose of all the abovementioned three writ petitions, as they arise from a similar factual matrix and pose a common question of law. However, for the sake of brevity, the facts are taken from ***CWP-34752-2025***.

2. Present writ petition has been filed under Articles 226/227 of the Constitution of India seeking the following:

- (i) Issuance of a writ in the nature of *certiorari* for quashing of impugned advertisement No.04/2025 dated 21.05.2025 (Annexure P-3), vide which no posts under Physically Handicapped (OH) (for short 'PH(OH)') category for recruitment as Scientist-B (Group B) in Haryana State Pollution Control Board (HSPCB) were advertised.
- (ii) Issuance of a writ the nature of *certiorari* for quashing of impugned corrigendum dated 25.09.2025 (Annexure P-7), whereby the number of posts for Scientist-B in HSPCB were increased from 05 to 18, but no posts were notified under the PH (OH) category.
- (iii) Issuance of writ in the nature of *mandamus* directing the respondents to accept the candidature of the petitioner in the PH (OH) category for the post of Scientist-B in terms of



advertisement No.04/2025 dated 21.05.2025 (Annexure P-3) by creating a post.

- (iv) Issuance of a writ in the nature of *mandamus* directing the respondents to call the petitioner for subject knowledge test and further the selection process by granting him relaxation in the advertisement (Annexure P-3) in terms of the applicable government instructions (Annexures P-18 to P-23).
- (v) Issuance of a writ in the nature of *mandamus* directing the respondents to decide the representation dated 16.06.2025 (Annexure P-6) moved by the petitioner.

**FACTUAL BACKGROUND**

**(i) CWP-34752-2025 [Sohan Singh]**

3. Respondent No.2-Haryana Public Service Commission issued advertisement No.04/2025 dated 21.05.2025 (Annexure P-3) for recruitment to the post of Scientist-B (Group B) with respondent No.3-HSPCB. A total of 05 vacancies were notified and the last date for submission of online applications was set as 16.06.2025. However, no posts were reserved for those with a physical disability. Moreover, the post earmarked under the category of PH (OH) vide advertisement No.9/2022, remained vacant and was required to be carried forward in terms of the instructions dated 25.08.2018 and 21.07.2023 issued by the



Government of Haryana. Since the needful was not done, the petitioner moved a representation dated 16.06.2025 (Annexure P-4) regarding compliance with Section 34 (2) of the Rights of Persons with Disabilities Act, 2016 (for short 'RPWD Act') and the instructions dated 22.10.2013, 25.04.2018, 01.05.2019 and 11.07.2023.

4. Further, the petitioner, being eligible under the General/UR category, applied for the said post and submitted all documents along with his application form dated 16.06.2025 (Annexure P-5). As per the announcement dated 16.07.2025 (Annexure P-6), the selection process would include the following stages - screening test (100 marks), subject knowledge test (150 marks) and interview. Thereafter, the respondent-Commission issued a corrigendum dated 25.09.2025 (Annexure P-7) increasing the number of advertised posts for Scientist-B from 05 to 18. However, no reservation was provided under the PH (OH) category.

5. The petitioner received a letter dated 16.10.2025 (Annexure P-9) stating that in pursuance of his request dated 29.09.2025, the respondent-Commission has forwarded the matter to respondent No.1. Meanwhile, the Screening Test was conducted, which the petitioner did not qualify. Aggrieved by the lack of reserved posts for persons with disabilities as well as the failure of the respondents to relax the standards



of selection for such candidate, the petitioner has preferred the present writ petition.

**(ii) CWP-37099-2025 [Devender Aggarwal]**

6. The respondent-Commission issued Advertisement No.20 of 2025 dated 13.08.2025 (Annexure P-5) for 29 posts of Assistant Environmental Engineer (Group-B) with the respondent-HSPCB, out of which 02 posts were kept reserved for the candidates falling under the Persons with Benchmark Disabilities (Locomotor Disability or Cerebral Palsy) category. Being otherwise eligible, the petitioner applied to the said post under the PwBD (Locomotor Disability or Cerebral Palsy) category. He appeared in the Screening Test held on 02.11.2025 and qualified the same, as reflected by result dated 11.11.2025 (Annexure P-6). Notably, out of a total of 18 candidates in the PwBD category, only 12 candidates qualified the Screening Test. Thereafter, a Subject Knowledge Test was held on 25.11.2025, in which none of the 12 candidates secured the minimum qualifying marks i.e. 35%. Thus, no candidates from the PwBD category were invited for the Interview. Aggrieved by the lack of relaxation in qualifying marks to fill the 02 posts reserved for candidates from PwBD category, the petitioner has preferred the present writ petition.



**(iii) CWP-37156-2025 [Naveen Kumar]**

7. The respondent-Commission issued an advertisement No.20 of 2025 dated 13.08.2025 (Annexure P-1) for 29 posts of Assistant Environmental Engineer (Group-B) in the respondent-HSPCB. Being otherwise eligible, the petitioner applied for the same under EWS category and PwBD (OH) sub-category, being affected by Cerebral Palsy. Subsequently, vide announcement dated 02.09.2025 (Annexure P-4), the respondent-Commission introduced minimum cut off marks for qualification, which were not previously mentioned in the advertisement (Annexure P-1). The petitioner qualified the Screening Test conducted on 02.11.2025, but could not clear the Subject Knowledge Test, as he did not secure a minimum of 35% marks. The petitioner sent an email (Annexure P-7) to the respondent-Commission stating that it was the second time that no candidate from PwBD category could qualify the Subject Knowledge Test due to the stringent criteria, unilaterally fixed by it. Thereafter, he also moved a representation on 08.11.2025, flagging that the candidates from the PwBD category could not be made to compete with their able bodied counterparts, but to no avail. Aggrieved by the lack of relaxation in qualification criteria, the petitioner preferred the present writ petition.



## CONTENTIONS

### **(i) CWP-34752-2023 [Sohan Singh]**

8. Learned counsel for the petitioner submitted that the petitioner is a highly qualified professional with a Ph.D. in Animal Biotechnology, M.Phil.in Biotechnology, B.Ed., M.Sc. in Biotechnology and a P.G. Diploma in Cyber Law and Intellectual Property Rights. The petitioner also suffers 100% locomotor disability, as indicated by his disability certificate (Annexure P-2) owing to PPRP bilateral lower limb with scoliosis. Being otherwise eligible, the petitioner applied to the post of Scientist-B in terms of the advertisement (*supra*) under the General/UR category as no posts had been reserved for disabled candidates.

9. He further contended that 11 posts of Scientist-B in the respondent-HSPCB were notified vide advertisement No.09/2022 out of which, 01 post was earmarked for PH(OH) category. Since the same remained vacant, it was required to be carried forward to the subsequent recruitment process i.e. advertisement (*supra*), in terms of Instructions dated 25.04.2018 (Annexure P-19). Further, as per the mandate of the RPWD Act, a post was required to be identified and kept reserved for persons with disabilities. However, in spite of there being an admitted backlog, the advertisement (*supra*) did not reflect any reserved posts for persons with disabilities.



10. Further still, learned counsel referred to the instructions dated 15.07.2014 (Annexure P-18), 01.05.2019 (Annexure P-20) and 01.07.2022 (Annexure P-21) to submit that time and again, Government of Haryana has directed for the general standards to be relaxed if sufficient number of candidates are not available in the physically disabled category in order to fill the vacant posts. Additionally, the Chief Secretary to the Government of Haryana has issued Instructions dated 11.07.2023 (Annexure P-23) re-emphasizing the need to follow the settled law to all concerned department/administrative secretaries (Annexures P-18, P-20 and P-21). However, no such relaxations have been provided in the present case. A total of 03 candidates in the PH(OH) category passed the Screening Test but since they could not qualify the Subject Knowledge Test with a minimum of 35 marks, they were not invited for interview.

11. Learned counsel for respondent-Commission submitted that the Commission has issued the advertisement (*supra*) on the basis of the requisition received from the respondent-HSPCB, wherein no post was earmarked for persons with disabilities. The respondent-Commission is bound by the requisition and could not have made alterations to it in order to earmark posts for candidates falling under the PH (OH) category. Moreover, the petitioner had submitted his application in terms of



advertisement (*supra*) without any protest and is thus bound by its terms and conditions. In fact, he only raised an objection upon declaration of result of the Screening Test, which the petitioner failed to clear. It is further submitted that the petitioner appeared in the Subject Knowledge Test and interview in terms of orders dated 21.11.2025 and 11.12.2025, respectively and his result has been kept in sealed cover. Additionally, the selection process stands completed as the final results for the post of Scientist-B in respondent-HSPCB have already been declared on 16.12.2025 (Annexure R-3/4) whereby the names of 16 candidates were recommended by the respondent-Commission. It would be relevant to mention that 02 posts were kept vacant on account of clarification from the Department/Government.

12. *Per contra*, learned counsel for respondent-HSPCB submitted that inadvertently, the post reserved for PH(OH) category candidates was not included in requisition dated 22.12.2023 for 05 posts of Scientist-B, sent to the respondent-Commission. This error remained unnoticed even when the requisition for an additional 13 posts was sent, pursuant to which corrigendum dated 25.09.2025 was issued. Further, vide letter dated 26.12.2025 (Annexure R-3/5), it was requested that the respondent-Commission may be directed to consider 01 post for PH (OH) category out of the 02 remaining vacant posts and recommend an eligible



candidate from the said category. However, learned counsel referred to the judgment rendered by a Division Bench of this Court in ***LPA No.2408 of 2025*** titled '***Sachin Kumar vs. State of Haryana and others***' decided on 29.11.2025 wherein it was held that the fitness of the candidate would be relevant consideration in order to maintain administrative efficiency and thus, the threshold for minimum qualifying marks cannot be diluted at all stages of a recruitment process.

(ii) **CWP-37099-2025**[Devender Aggarwal]

(iii) **CWP-37156-2025** [Naveen Kumar]

13. Learned counsel for the petitioner(s), respectively, contended that the minimum qualifying marks for the Subject Knowledge Test was fixed at 35% vide announcement dated 02.09.2025 (Annexure P-4). However, this criteria did not form a part of the advertisement dated 13.08.2025 (Annexure P-1), pursuant to which the petitioners had applied for the post of Assistant Environmental Engineer with the respondent-HSPCB. The subsequent introduction of an eligibility criteria is forbidden in view of the judgment rendered by the Hon'ble Supreme Court in ***Tej Prakash Pathak and others Vs. Rajasthan High Court and others, (2025) 2 SCC 1*** as it amounts to changing the rules of the game after the same has already been set in motion. Furthermore, applying a uniform qualifying criterion for candidates under the PwBD category and their able-bodied counterparts is violative of Article 14 of the Constitution of



India. Additionally, Section 4 of the RPWD Act, instructions dated 25.04.2018 (Annexure P-11), 01.05.2019 (Annexure P-13) and 01.07.2022 (Annexure P-14), as well as notifications dated 07.02.2023 and 11.07.2023 (Annexures P-15 and P-16, respectively) issued by the Government of Haryana provides for relaxation of standards if sufficient number of candidates from the PwBD category are not found eligible. However, ignoring the same, the respondent-Commission has disqualified the petitioner(s) as well as all other candidates from the PwBD category, from the selection process, leaving the 02 posts earmarked for the PwBD category vacant.

14. Learned counsel for the respondent-Commission argued that it is incorrect to suggest that the qualifying criteria was issued after the issuance of advertisement (Annexure P-1) as Clause 10 thereof clearly states that the method of recruitment would be notified separately. The announcement dated 02.09.2025 (Annexure P-4) merely detailed the scheme of examination, much prior to conducting first stage of the selection process and did not alter any essential conditions, as such, it does not fall foul of *Tej Prakash Pathak's* case (*supra*). He further submitted that in absence of a statutory rule prescribing the mode and manner of selection, the respondent-Commission was well within its rights to formulate a scheme for the same. As such it was decided that the



minimum qualifying marks for the Screening Test would be 25% while that for the Subject Knowledge Test would be 35%. Notably, the petitioner(s) have not raised any grievance against the 25% cut-off marks with respect to the Screening Test as both of them have cleared it. The petitioner(s) participated in the selection process with full knowledge of the prescribed criteria and did not raise any objection at any stage thereof. It was only when they were declared unsuccessful in the Subject Knowledge Test that the present challenge was raised. This approach is proscribed by the Hon'ble Supreme Court in *Madan Lal and others Vs. State of Jammu and Kashmir, (1995) 3 SCC 486*, *State of U.P. Vs. Karunesh Kumar, 2023 AIR SC 52* and *Tejvir Singh Sodhi Vs. State of Jammu and Kashmir, (2023) 17 SCC 147*.

15. Learned counsel further submitted that there is no statutory mandate binding the respondent-Commission to relax the minimum qualifying marks. Section 34 of the RPWD Act provides for reservation but does not stipulate lowering of standards of suitability to accommodate candidates from the PwBD category. Further, the government instructions referred to by the petitioner(s), envisages that the employer 'may' relax the criteria. However, since the requisition sent to the respondent-Commission by the respondent-HSPCB did not mention anything regarding grant of any such relaxation, the respondent-Commission



cannot employ the same on its own. Reliance in this regard is also placed on *Sachin Kumar*'s case (*supra*).

16. Learned counsel for respondent-HSPCB, on the other hand, submitted that in the year 2023, the respondent-HSPCB had sent a requisition vide letters dated 03.05.2023 and 21.06.2023 (Annexure R-3/1 and 3/2 in CWP-37156-2025) to fill up 54 posts of Assistant Environmental Engineer. In furtherance of the same, 25 candidates were recommended for appointment by the respondent-Commission. However, the 02 posts reserved for the PwBD category therein- 01 for general (PH) and 01 for EWS (PH) remained vacant as no candidate from the said category were found eligible.

17. Thereafter, another requisition was sent by the respondent-HSPCB for 29 posts of Assistant Environmental Engineer vide letter dated 05.02.2025, wherein 02 posts were reserved for candidates from PwBD category- 01 for general (PH) and 01 for EWS (PH). In response to this requisition, the respondent-Commission recommended 29 candidates vide letter dated 16.12.2025 (Annexure R-3/5 in CWP-37156-2025). However, since no candidate from the PwBD category was found eligible again, the respondent-Commission recommended two other candidates namely- Abhimanyu Balyan (Roll No.27014, category



General/UR), who is at serial No.03 in the merit list and Aakash (Roll No.17497 category EWS), who is at serial No.20 in the merit list against the reserved posts. Both the aforementioned candidates are the next eligible candidates in the lists for their respective merit categories. Should the reserved posts for PwBD category be de-reserved, in terms of instructions dated 25.04.2018 (Annexure R-3/6) issued by the Chief Secretary to the Government of Haryana, the abovementioned candidates deserve consideration for appointment. As of now, appointment letters have not been issued to Abhimanyu Balyan and Aakash, as the issue of de-reservation is under consideration.

### **OBSERVATIONS AND ANALYSIS**

18. Having heard learned counsel for the parties and after perusing the record of the aforementioned writ petitions, it transpires that the petitioner(s) have approached this Court well in time, i.e. immediately after the commencement of the selection process and they were provisionally permitted to participate in the subsequent stages of selection process through interim orders. Thus, it is not a case where unsuccessful candidates have agitated their claims after completion of the selection process. As such, this Court is required to adjudicate the issue of



relaxation in selection criteria raised by them in the present writ petition(s).

19. The respondent-HSPCB in CWP-34752-2025 has conceded that no posts were earmarked for persons with disabilities out of an inadvertent error on its part. Moreover, petitioner-Sohan Singh was allowed to provisionally appear for the Subject Knowledge Test as well as the Interview in terms of orders dated 21.11.2025 and 11.12.2025 passed by this Court. Thus, this issue does not merit further discussion.

20. However, the common malady highlighted in all three of the aforementioned writ petitions pertains to denial of any relaxation with respect to the qualifying criteria to the candidates with disabilities. Therefore, the following question is framed for adjudication by this Court:

***“Whether relaxation in the selection criteria with respect to persons with disabilities is constitutionally and jurisprudentially justified and warranted?”***

• **Constitutional and Statutory Protections to Persons with Disabilities**

21. The Preamble to the Constitution of India outlines the core values and guiding philosophy of the State and in that capacity, makes an



enduring promise of social justice and equality of status and opportunity to all its citizens. The Constitution is clear in its mandate that all citizens shall be considered equal in the eyes of law and be provided with equal opportunities. However, the fact that certain sections of the society are more vulnerable than others has also been duly considered by the framers as evidenced by introduction of provisions enabling the State to make special accommodations in their benefit. On that note, this Court is of the considered opinion that the disadvantages faced by persons with disabilities are not limited to existence of physical or mental impairments, but are also rooted in social and institutional barriers that restrict their equal participation in everyday life.

22. The notion of ableism holds able-bodiedness to be a superior state of being, which often results in fewer educational and employment opportunities for persons with disabilities, irrespective of capabilities. Notably, students with disabilities may not respond to the same method of teaching as their able-bodied counterparts, yet they are not always provided with resources like assistive learning softwares, sign language interpreters, inclusive infrastructure etc. to ensure that they attain their learning goals. Even if one completes their educational training, persons with disabilities often struggle with finding opportunities of employment as they are viewed as inefficient workers and a liability to the employer.



Such a primitive approach is antithetical to the constitutional guarantees. As also noted by the Hon'ble Supreme Court in *Jeeja Ghosh and another Vs. Union of India and others, (2016) 7 SCC 761*, a disability does not disentitle a person from seeking fulfillment in terms of education, career and personal life, and thus, their rights ought to be looked at from a human rights lens. Speaking through Justice A.K. Sikri, the following was observed:

*“39. In international human rights law, equality is founded upon two complementary principles: non-discrimination and reasonable differentiation. The principle of non-discrimination seeks to ensure that all persons can equally enjoy and exercise all their rights and freedoms. **Discrimination occurs due to arbitrary denial of opportunities for equal participation. For example, when public facilities and services are set on standards out of the reach of persons with disabilities, it leads to exclusion and denial of rights. Equality not only implies preventing discrimination (example, the protection of individuals against unfavourable treatment by introducing anti-discrimination laws), but goes beyond in remedying discrimination against groups suffering systematic discrimination in society. In concrete terms, it means embracing the notion of positive rights, affirmative action and reasonable accommodation.** The move from the patronising and paternalistic approach to persons with disabilities represented by the medical model to viewing them as members of the community with equal rights has also been reflected in the evolution of international standards relating specifically to disabilities, as well as in moves to place the rights of persons with disabilities within the category of universal human rights. {See - Report of United Nations Consultative Expert Group Meeting on International Norms and Standards Relating to Disability 10-2-2001}.*

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42. ...What is to be borne in mind is that they are also human beings and they have to grow as normal persons and are to be extended all facilities in this behalf. The subject of the rights of persons with disabilities should be approached from human rights perspective, which recognised that persons with disabilities were entitled to enjoy the full range of internationally guaranteed rights



*and freedoms without discrimination on the ground of disability. **This creates an obligation on the part of the State to take positive measures to ensure that in reality persons with disabilities get enabled to exercise those rights. There should be insistence on the full measure of general human rights guarantees in the case of persons with disabilities, as well as developing specific instruments that refine and given detailed contextual content of those general guarantees.** There should be a full recognition of the fact that persons with disability were integral part of the community, equal in dignity and entitled to enjoy the same human rights and freedoms as others. It is a sad commentary that this perceptions has not sunk in the mind and souls of those who are not concerned with the enforcement of these rights. The persons suffering from mental or physical disability experience and encounter nonpareil form of discrimination. They are not looked down by people. However, they are not accepted in the main stream either even when people sympathies with them. Most common, their lives are handicapped by social, cultural and attitudinal barriers which hamper their full participation and enjoyment of equal rights and opportunities. This is the worst form of discrimination which disabled feel as their grievance is that others do not understand them.*

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*45. It is the common experience of several persons with disabilities that they are unable to lead a full life due to societal barriers and discrimination faced by them in employment, access to public spaces, transportation etc. Persons with disability are most neglected lot not only in the society but also in the family. More often they are an object of pity. There are hardly any meaningful attempts to assimilate them in the mainstream of the nation's life. The apathy towards their problems is so pervasive that even the number of disabled persons existing in the country is not well documented.”*

(emphasis added)

23. At this juncture, it would be appropriate to note that the following provisions of the Constitution of India provide for the right to equality and the State's duty to realize the same, especially with respect to persons with disabilities:



**“Article 14.**

*The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India*

**Article 16.**

*(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.*

*(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.*

**Article 21.**

*No person shall be deprived of his life or personal liberty except according to procedure established by law.*

**Article 41.**

*The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.*

**Article 243W.**

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*9. Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.”*

24. A special legislation titled as Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short ‘Act of 1955’) was put in place to formalize the protections intended to be provided to persons with disabilities and practically assist them in overcoming societal and psychological impediments, amongst others. The Act of 1955 was succeeded by the Rights of Persons with Disabilities Act,



2016 (RPWD Act). The relevant provisions of the RPWD Act with respect to the matter at hand are listed below:

**“2. Definitions.—**

*In this Act, unless the context otherwise requires,—*

***(y) “reasonable accommodation” means necessary and appropriate modification and adjustments, without imposing a disproportionate or undue burden in a particular case, to ensure to persons with disabilities the enjoyment or exercise of rights equally with others***

**3. Equality and non-discrimination.—**

***(1) The appropriate Government shall ensure that the persons with disabilities enjoy the right to equality, life with dignity and respect for his or her integrity equally with others.***

*(2) The appropriate Government shall take steps to utilise the capacity of persons with disabilities by providing appropriate environment.*

*(3) No person with disability shall be discriminated on the ground of disability, unless it is shown that the impugned act or omission is a proportionate means of achieving a legitimate aim.*

***(4) No person shall be deprived of his or her personal liberty only on the ground of disability.***

***(5) The appropriate Government shall take necessary steps to ensure reasonable accommodation for persons with disabilities.***

**33. Identification of posts for reservation.—**

*The appropriate Government shall—*

***(i) identify posts in the establishments which can be held by respective category of persons with benchmark disabilities in respect of the vacancies reserved in accordance with the provisions of section 34;***

*(ii) constitute an expert committee with representation of persons with benchmark disabilities for identification of such posts; and*



(iii) undertake periodic review of the identified posts at an interval not exceeding three years.

#### **34. Reservation.—**

**(1) Every appropriate Government shall appoint in every Government establishment, not less than four per cent. of the total number of vacancies in the cadre strength in each group of posts meant to be filled with persons with benchmark disabilities of which, one per cent. each shall be reserved for persons with benchmark disabilities under clauses (a), (b) and (c) and one per cent. for persons with benchmark disabilities under clauses (d) and (e), namely:—**

- (a) blindness and low vision;
- (b) deaf and hard of hearing;
- (c) locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy;
- (d) autism, intellectual disability, specific learning disability and mental illness;
- (e) multiple disabilities from amongst persons under clauses (a) to (d) including deaf-blindness in the posts identified for each disabilities:

*Provided that the reservation in promotion shall be in accordance with such instructions as are issued by the appropriate Government from time to time:*

*Provided further that the appropriate Government, in consultation with the Chief Commissioner or the State Commissioner, as the case may be, may, having regard to the type of work carried out in any Government establishment, by notification and subject to such conditions, if any, as may be specified in such notifications exempt any Government establishment from the provisions of this section.*

**(2) Where in any recruitment year any vacancy cannot be filled up due to non-availability of a suitable person with benchmark disability or for any other sufficient reasons, such vacancy shall be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable person with benchmark disability is not available, it may first be filled by interchange among the five categories and only when there is no**



**person with disability available for the post in that year, the employer shall fill up the vacancy by appointment of a person, other than a person with disability:**

*Provided that if the nature of vacancies in an establishment is such that a given category of person cannot be employed, the vacancies may be interchanged among the five categories with the prior approval of the appropriate Government.*

*(3) The appropriate Government may, by notification, provide for such relaxation of upper age limit for employment of persons with benchmark disability, as it thinks fit.”*

(emphasis added)

25. The Hon'ble Supreme Court in ***In Re: Recruitment of Visually Impaired in Judicial Services, 2025 SCC OnLine SC 481*** has opined that the RPWD Act has acquired the status of a super-statute as it not only illustrates the intention but also establishes an institutional framework that guides the law. In fact, it was observed that the RPWD Act contains ingredients of a quasi-constitutional law. On that note, in furtherance of the constitutional promises of a life of dignity and equal opportunities in all spheres, the RPWD Act calls upon the State to create opportunities where the capabilities of persons with disabilities can be appropriately utilized. Significantly, it mandates that accommodations be made in their favour by modifying standards as and where necessary to grant equal opportunities. It also makes it incumbent upon the State to identify posts suitable for persons with disabilities, with special emphasis on persons with benchmark disabilities, and reserve a percentage of such posts for them.



- **Modification of Selection Criteria**

26. Tritely, equal treatment to unequals does not always yield equitable results. Since most norms and criteria are established by the able-bodied for the able-bodied, it might seem that setting a common qualifying standard for all classes of candidates is obvious and innocuous. However, once the systemic imbalance that tilts against persons with disabilities is accounted for, it is made obvious that all classes of candidates cannot be judged against the same scale, when their circumstances are not identical.

27. In *Re: Recruitment of Visually Impaired in Judicial Services* (*supra*), a two-Judge Bench of the Hon'ble Supreme Court was faced with a situation where the candidates, visually impaired and able-bodied alike, were required to have 03 years of practice experience or 70% marks in the examination, in the first attempt. Applying the principle of indirect discrimination it was held that the visually impaired and able-bodied candidates do not face the same level of difficulty in acquiring the said marks or practicing law for the requisite duration, as such, they cannot be subjected to the same criterion. Speaking through Justice R. Mahadevan, the following was opined:

*“46. Thus, the principle of indirect discrimination hereinbefore applied to counter gender-based discrimination, can also be applied to the facts of the present case, where disabled/visually*



*impaired legal practitioners are sought to be equated with their able-bodied counterparts in the matter of application of certain conditions for participation for selection to the post of judicial officers. Applying such a test of indirect discrimination, the ease of practice as well as the securing of marks cannot be said to be an equal condition to both classes of citizens, viz., disabled and ablebodied lawyers, given that the atmosphere in which they operate cannot be said to be the same. This is also a perfect example of how unequals are sought to be treated equally, and that itself would be a negation of the principle of substantive equality. Therefore, it can easily be inferred that the rule relating to practice or in the alternative, to secure 70% in the first attempt in the examinations, is a case of indirect discrimination as the provisions are facially neutral but discriminatory in operation. In view of the same, Rule 7 of the Madhya Pradesh Judicial Service Rules, 1994, to the extent it prescribes the additional requirement of either a three-year practice period or securing an aggregate score of 70% in the first attempt, is liable to be struck down insofar as it applies to PwD candidates. Accordingly, the impugned Rule will be applicable to PwD candidates insofar as it prescribes the educational and other qualifications as eligibility criteria including the minimum aggregate score of 70% (with relaxation as may be determined like in the case of SC/ST candidates) but without the requirement of either that it should be in the first attempt or that they should have three years' practice. This issue stands answered in the said terms.”*

(emphasis added)

28. The legislative intent to make reasonable accommodations for persons with disabilities is rather palpable throughout the RPWD Act. It



must be understood that when recruitment process is under consideration, relaxing the selection criteria, in view of the disadvantages faced by persons with disabilities, is imperative to achieve substantive equality in furtherance of the statutory promise of 'reasonable accommodation.' The reservation of posts in favour of persons with disabilities would be rendered redundant if they are judged on the exact same criteria as their able bodied counterparts. Further, the failure of the State-employer to carry forward the vacant posts reserved for persons with disabilities or de-reserve them would reduce the RPWD Act to a dead letter.

29. In his book titled as '*Equality*,' R.H. Tawney has postulated that equality of opportunity demands active removal of social and systemic impediments that hinders individuals from realizing their capabilities. An extract from the said book is reproduced below:

*“The truth is that it is absurd and degrading for men to make much of their intellectual and moral superiority to each other and still more of their superiority in the arts which bring wealth and power, because, judged by their place in any universal scheme, they are infinitely great or infinitely small..... The equality which all these thinkers emphasise as desirable is not equality of capacity or attainment but of circumstances, and institutions, and manner of life. The inequality which they deplore is not the inequality of personal gifts, but of the social and economic environment ..... Their view, in short, is that, because men are men, social institutions, property rights, and the organisation of industry, and the system of public health and education should be planned, as far as is possible to emphasise and strengthen, not the class differences which divide but the common humanity which unite, them.”*



30. Equality does not mean uniform treatment of all, regardless of their circumstances. To achieve substantive equality, the State must endeavor to dismantle the social and economic barriers that impede persons with disabilities from realizing their full potential and only then, can genuine opportunities become truly accessible to them. Accordingly, the emphasis must be on ensuring real and effective access rather than mechanical uniformity. This approach resonates with the constitutional philosophy enshrined under Articles 14, 15, 16 & 41 of the Constitution of India, which permits reasonable classification, protective discrimination and affirmative measures in order to alleviate structural disadvantages. Persons with disabilities do not enter the competition at an equal footing with their able-bodied counterparts, thus, imposing uniform standards only further entrenches inequality under the guise of impartiality. Thus, relaxations by way of age concessions, modified selection criteria etc. are justified and warranted in order to propagate equality, as intended by the framers of the Constitution. Such actions fall under the ambit of 'reasonable accommodations' as provided in the RPWD Act and without making these special considerations, the promise of a fulfilling life made to the disabled citizens would ring hollow. As such, relaxation in selection process is a necessary instrument for achieving genuine, substantive and transformative equality.



31. A Constitution Bench of the Hon'ble Supreme Court in ***Indra Sawhney Vs. Union of India, 1993 AIR SC 477***, consisting of 09 Judges, speaking through Justice S. Ratnavael Pandian, made the following observations in this regard: -

*“831. We must also make it clear that **it would not be impermissible for the State to extend concessions and relaxations to members of reserved categories in the matter of promotion without compromising the efficiency of the administration.** The relaxation concerned in ***Thomas [(1976) 2 SCC 310, 380 :1976 scc (l&s) 227: (1976) 1 SCR 906]*** and the concessions namely carrying forward of vacancies and provisions for in-service coaching/training in ***Karamchari Sangh [(1981) 1 SCC 246, 289 : 1981 SCC(L&S) 50: (1981) 2 SCR 185, 234]*** are instances of such concessions and relaxations. However, it would not be permissible to prescribe lower qualifying marks or a lesser level of evaluation for the members of reserved categories since that would compromise the efficiency of administration. We reiterate that while it may be permissible to prescribe a reasonably lesser qualifying marks or evaluation for the OBCs, SCs and STs- consistent with the efficiency of administration and the nature of duties attaching to the office concerned - in the matter of direct recruitment, such a course would not be permissible in the matter of promotions for reasons recorded hereinabove.*

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*836. We do not think it necessary to express ourselves at any length on the correctness or otherwise of the opposing points of view referred to above. (It is, however, necessary to point out that the mandate - if it can be called that - of Article 335 is to take the claims of members of SC/ST into consideration, consistent with the maintenance of efficiency of administration. It would be a misreading of Article to say that the mandate is maintenance of efficiency of administration.) **May be, efficiency, competence and merit are not synonymous concepts; May be, it is wrong to treat merit as synonymous with efficiency in administration and that merit is but a component of the efficiency of an administrator. Even so, the relevance and significance of merit at the stage of initial recruitment cannot be ignored. It cannot also be ignored that the very idea of reservation implies selection of a less meri-***



**torious person. At the same time, we recognise that this much cost has to be paid, if the, constitutional promise of social justice is to be redeemed. We also firmly believe that given an opportunity, members of these classes are bound to overcome their initial disadvantages and would compete with - and may, in some cases, excel - members of open competitor candidates. It is undeniable that nature has endowed merit upon members of backward classes as much as it has endowed upon members of other classes and that what is required is an opportunity to prove it. It may not, therefore, be said that reservations are antimeritarian. Merit there is even among the reserved candidates and the small difference, that may be allowed at the stage of initial recruitment is bound to disappear in course of time. These members too will compete with and improve their efficiency along with others.”**

(emphasis added)

32. As such, in the matter at hand, the appointing authority i.e. ultimately the Government of Haryana is competent to relax the minimum qualifying marks, as permitted by *Indra Sawhney's* case (*supra*), especially in view of the multiple instructions issued by it in this regard. The same are reproduced below: -

***“Instructions dated 25.04.2018 (Annexure P-11 in CWP-37099-2025)***

***“Subject: Reservation for Persons with Benchmark Disabilities:***

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***M) EXCHANGE AND CARRY FORWARD OF RESERVATION IN CASE OF DIRECT RECRUITMENT:***

***(i) Reservation for each of the four categories of persons with benchmark disabilities shall be made separately. But if the nature of vacancies in an establishment is such that a person of a specific category of disability cannot be employed, the vacancies may be interchanged among the four categories with the approval of the Social Justice & Empowerment Department and reservation may be determined and vacancies filled accordingly.***

***(ii) If any vacancy reserved for any category of disability cannot be filled due to non- availability of a suitable person with that***



*disability or, for any other sufficient reason, such vacancy shall be carried forward to the subsequent recruitment year.*

*(iii) In the subsequent recruitment year the carried forward vacancy shall be treated as reserved for the category of disability for which it was kept reserved in the initial year of recruitment. However, if a suitable person with that disability is not available, it may be filled by interchange among the four categories of disabilities. In case no suitable person with benchmark disabilities is available for filling up the post in the subsequent year also, the employer may fill up the vacancy by appointment of a person other than a person with disability.*

*-Instructions 15.07.2014 (Annexure 12 in CWP-37099-2025)*

*“Subject: Grant of reservation in Jobs under Government/Government Undertakings & Local Bodies as well as in admission in Government/Government aided educational/technical/ Professional institutions.*

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*L) INTER SE EXCHANGE AND CARRY FORWARD OF RESERVATION IN CASE OF DIRECT RECRUITMENT:*

*a) Reservation for each of the three categories of persons with disabilities shall be made separately. But if the nature of vacancies in an establishment is such that a person of a specific category of disability cannot be employed, the vacancies may be interchanged among the three categories with the approval of the Department of Social Justice & Empowerment and reservation may be determined and vacancies filled accordingly.*

*b) If any vacancy reserved for any category of disability cannot be filled due to non-availability of a suitable person with that disability or, for any other sufficient reason, such vacancy shall not be filled and shall be carried forward as a 'backlog reserved vacancy' to the subsequent recruitment year.*



c) In the subsequent recruitment year the 'backlog reserved vacancy' shall be treated as reserved for the category of disability for which it was kept reserved in the initial year of recruitment. **However, if a suitable person with that disability is not available, it may be filled by interchange among the three categories of disabilities.** In case no suitable person with disability is available for filling up the post in the subsequent year also, the employer may fill up the vacancy by appointment of a person other than a person with disability. If the vacancy is filled by a person with disability of the category for which it was reserved or by a person of other category of disability by inter se exchange in the subsequent recruitment year, it will be treated to have been filled by reservation. But if the vacancy is filled by a person other than a person with disability in the subsequent recruitment year, reservation shall be carried forward for a further period upto two recruitment years whereafter the reservation shall lapse. In these two subsequent years, if situation so arises, the procedure for filling up the reserved vacancy shall be the same as followed in the first subsequent recruitment year.

In order to ensure that cases of lapse of reservation are kept to the minimum, any recruitment of the disabled candidates shall first be counted against the additional quota brought forward from previous years, if any, in their chronological order. If candidates are not available for all the vacancies, the older carried forward reservation would be filled first and the relatively later carried forward reservation would be further carried forward.

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O) RELAXATION OF STANDARD OF SUITABILITY:

**If sufficient number of persons with disabilities are not available on the basis of the general standard to fill all the vacancies reserved for them, candidates belonging to this category may be selected on relaxed standard to fill up the remaining vacancies reserved for them provided they are not found unfit for such post or posts.** Thus, to the extent the number of vacancies reserved for persons with disabilities cannot be filled on the basis of



*general standards, candidates belonging to this category may be taken by relaxing the standards to make up the deficiency in the reserved quota subject to the fitness of these candidates for appointment to the post/posts in question.”*

***-Instructions dated 01.05.2019 (Annexure P-13 in CWP-37099-2025)***

***“Subject: Reservation for the Persons with Benchmark Disabilities in case of direct recruitment to Govt. jobs.***

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***Q) RELAXATION OF STANDARD OF SUITABILITY:***

***i) If sufficient numbers of candidates with benchmark disabilities candidates are not available on the basis of the general standard to fill all the vacancies reserved for them, candidates belonging to this category may be selected on relaxed standard to fill up the remaining vacancies reserved for them provided they are not found unfit for such post or posts. However, this provision shall not be used to allow any relaxation in the eligibility criteria laid down for the issuance of certificate of disability.***

*ii) Same relaxed standard should be applied for all the candidates with Benchmark Disabilities whether they belong to Unreserved/ SC/BC. No further relaxation of standards will be considered or admissible in favour of any candidate from any category whatsoever.”*

***-Instructions dated 01.07.2022 (Annexure P-14 in CWP-37099-2025)***

***“Subject: Grant of Reservation in Promotion to the Persons with Benchmark Disabilities under the Rights of Persons with Disabilities Act, 2016.***

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#### *9. RELAXATION OF STANDARD OF SUITABILITY:*

*9.1 If sufficient number of PwBD candidates with benchmark disabilities are not available on the basis of prescribed standard to fill all the vacancies (in case of promotion through Limited Departmental Competitive Examination/ Departmental Examination, etc.) reserved for them, candidates belonging to this category may be selected on relaxed standard to fill up the remaining vacancies reserved for them, provided they are not found unfit for such post or posts. However, this provision shall not be used to allow any relaxation in the eligibility criteria laid down for the issuance of certificate of benchmark disability.*

*9.2 The same relaxed standard should be applied for all the PwBD candidates with benchmark disabilities, irrespective of whether they belong to the Unreserved/Scheduled Caste/Backward Classes category. No further relaxation of standards will be considered or admissible in favour of any candidate from any category whatsoever.*

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#### *14. ZONE OF CONSIDERATION, INTERSE EXCHANGE AND CARRY FORWARD OF RESERVATION IN CASE OF PROMOTION*

*14.1 While filling up the reserved vacancies by promotion by selection, those PWBD candidates who are within the normal zone of consideration shall be considered for promotion. However, if adequate number of PWBD candidates of the respective category are not available within the normal zone, the zone of consideration may be extended to five times the number of vacancies and the PwBD candidate falling within the extended zone may be considered for promotion. In the event of non-availability of candidates even in the extended zone, the vacancy shall not be filled and be carried forward to the subsequent year. In the subsequent year, if a PwBD of the required category is not available, the reservation can be exchanged with the other categories, so that post can be filled by a person with other category of disability, if*



*possible. If a PwBD candidate of other category is within the zone of consideration and within the number of vacancies available, he cannot be denied promotion on the grounds of disability. If it is not possible to fill up the post by reservation even in the 2nd year, the post may be filled by a person other than a PwBD, and the reservation shall be carried forward for two subsequent recruitment years, whereafter it shall lapse.*

*14.2 While filling up vacancies by promotion by non-selection, the eligible candidates with benchmark disabilities within the normal zone of consideration shall be considered for promotion against the reserved vacancies. In case no eligible candidate of the respective category of disability is available in the normal zone of consideration, additional PwBD candidates of respective category to the extent required shall be considered by going down the seniority list, provided they are eligible, and that the post is identified for them. In the event of non-availability of PwBD candidates for promotion even in the extended zone, the vacancy shall not be filled and shall be carried forward. In the subsequent year if PwBD of respective category is not available, the same can be exchanged with other categories of disabilities identified for it. If it is not possible to fill up the vacancy by reservation even by exchange, the reservation shall be carried forward for two subsequent recruitment years, whereafter it shall lapse*

*14.3 In order to ensure that cases of lapse of reservation are kept to the minimum, any recruitment of the PwBD candidates shall first be counted against the vacant posts brought forward from previous years, if any, in the chronological order. If candidates are not available for all the vacancies, the older carried-forward posts shall be filled first, and the current vacancies shall be carried forward, if not filled up, provided that in every recruitment, the number of vacancies reserved for PWBD, including the carried forward vacancies, shall be announced beforehand for the information of all aspirants.”*

***-Instructions dated 11.07.2023 (Annexure P-16 in CWP-37099-2025)***



**“Subject: *Grant of Reservation in Promotion to the Persons with Benchmark Disabilities under the Rights of Persons with Disabilities Act, 2016.*”**

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#### **6. IDENTIFICATION OF POSTS:-**

*6.1 The State Government, Department of Social Justice & Empowerment, Haryana has already adopted the list of identified posts circulated by the Ministry of Social Justice & Empowerment (Department of Disability Affairs), Government of India, New Delhi vide their Notification No. 38-16/2020-DDIII dated 4th January, 2021. The adoption of such 'list' by the State Government was conveyed vide notification bearing No.459-SW(4)/2021, dated 25th October, 2021 of the Social Justice & Empowerment Department, Haryana.*

*The 'list' of posts is not an exhaustive list. The Departments, Public Sector Undertakings and the Autonomous Bodies can further supplement the list. If a post is already held by a person with disability, it shall be deemed to have been identified. The nomenclature used in the 'list' includes any other nomenclature used for comparable posts with functions identical to the posts identified in the said notification.*

#### **9. RELAXATION OF STANDARD OF SUITABILITY:-**

*9.1 If sufficient number of PwBD candidates with benchmark disabilities are not available on the basis of prescribed standard to fill all the vacancies (in case of promotion through Limited Departmental Competitive Examination/ Departmental Examination, etc.) reserved for them, candidates belonging to this category may be selected on relaxed standard to fill up the remaining vacancies reserved for them, provided they are not found unfit for such post or posts. However, this provision shall not be used to allow any relaxation in the eligibility criteria laid down for the issuance of certificate of benchmark disability.*



*9.2 The same relaxed standard should be applied for all the PwBD candidates with benchmark disabilities, irrespective of whether they belong to the Unreserved/Scheduled Caste/Backward Classes category. No further relaxation of standards will be considered or admissible in favour of any candidate from any category whatsoever.”*

(emphasis added)

33. A perusal of the aforementioned instructions makes it clear that in the absence of a suitable number of candidates against the posts reserved for persons with disabilities, it was intended that the criteria of selection be relaxed. Further still, a cumulative reading of the above also indicates that in case posts reserved for persons with benchmark disabilities remain vacant, it was preferable to relax the criteria, carry the unoccupied posts forward to the next recruitment year or fill the same from other categories of disabled persons, before recruiting able-bodied candidates against them. However, it appears that in CWP-37099-2025 and CWP-37156-2023 i.e. **Devender Aggarwal's** case and **Naveen Kumar's** case, the respondent-Commission has chosen to cherry pick from the instructions dated 25.04.2018 (Annexure P-11 in CWP-37099-2025) in order to provisionally appoint Abhimanyu Balyan and Aakash, rather than attempt at filling the same from amongst the pool of candidates from the PH category, for whom the reservation was originally made. Similarly, in CWP-34752-2025 i.e. **Sohan Singh's** case, though admittedly without malice, no post was reserved in the first place for



candidates from the PH category, let alone granting concessions with regards to the qualifying marks in the Subject Knowledge Test for such candidates.

34. While Sections 2(y) and 3 of the RPWD Act, as well as the instructions (*supra*) issued by the Government of Haryana, provide for making reasonable accommodations to create an environment conducive enough for the persons with disabilities to participate in the selection process for public employment, their purpose would be rendered irrelevant if these promises are not put to practice. Creating a selection criteria where disabled candidates are measured against their able-bodied counterparts without taking into account the inherent disadvantage faced by them, falls foul of the statutory and constitutional guarantees provided to them. A three-Judge bench of the Hon'ble Supreme Court in ***Vikash Kumar Vs. Union Public Service Commission, (2021) 5 SCC 370***, speaking through Dr. Justice D.Y. Chandrachud, illustrated the principle of reasonable accommodation in the following manner: -

*“35. The principle of reasonable accommodation captures the positive obligation of the State and private parties to provide additional support to persons with disabilities to facilitate their full and effective participation in society. The concept of reasonable accommodation is developed in section (H) below. **For the present, suffice it to say that, for a person with disability, the constitutionally guaranteed fundamental rights to equality, the six freedoms and the right to life under Article 21 will ring hollow if they are not given this additional support that helps make these rights real and meaningful for them.** Reasonable*



*accommodation is the instrumentality - are an obligation as a society - to enable the disabled to enjoy the constitutional guarantee of equality and non-discrimination. In this context, it would be apposite to remember Justice R M Lodha's (as he then was) observation in **Justice Sunanda Bhandare Foundation v. Union of India, (2018) 2 SCC 397**, where he stated:*

***"9...In the matters of providing relief to those who are differently abled, the approach and attitude of the executive must be liberal and relief oriented and not obstructive or lethargic..."***

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*45. The principle of reasonable accommodation acknowledges that if disability as a social construct has to be remedied, conditions have to be affirmatively created for facilitating the development of the disabled. **Reasonable accommodation is founded in the norm of inclusion.** Exclusion results in the negation of individual dignity and worth or they can choose the route of reasonable accommodation, where each individuals' dignity and worth is respected. Under this route, the "powerful and the majority adapt their own rules and practices, within the limits of reason and short of undue hardship, to permit realization of these ends."*

(emphasis added)

35. Further, a three-Judge Bench of the Hon'ble Supreme Court in ***Ravinder Kumar Dhariwal Vs. Union of India, 2021(3) SCR 823*** underlined that formal equality may not always translate into substantive equality. Speaking through Justice Dr. Justice D.Y. Chandrachud, the following was opined: -

*"28. Article 14 of the Indian Constitution states that "the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India". The right to equality under the Indian Constitution has two facets - formal equality and substantive equality. **While formal equality means that every person, irrespective of their attributes must be treated equally and must not be discriminated against; substantive equality is aimed at producing equality of outcomes through different modes of affirmative action. The principle of reasonable accommodation is one of the means for achieving substantive equality, pursuant to which disabled individuals***



**must be reasonably accommodated based on their individual capacities.** Disability, as a social construct, precedes the medical condition of an individual. The sense of disability is introduced because of the absence of access to facilities.”

(emphasis added)

35.2. A two-Judge bench of the Hon’ble Supreme Court in ***Kabir Paharia Vs. National Medical Commission, 2025 AIR SC 2861***, speaking through Justice Sandeep Mehta, opined as follows:

**“5. The constitutional promise of equality is not merely formal but substantive, requiring the State to take affirmative measures to ensure that PwD and PwBD can meaningfully participate in all spheres of life, including professional education. We emphasize that reasonable accommodation is not a matter of charity but a fundamental right flowing from Articles 14, 16, and 21 of our Constitution.** When administrative authorities create arbitrary barriers that exclude qualified PwBD candidates, they not only violate statutory provisions but also perpetuate the historical injustice and stigmatisation. The fundamental rights and the dignity of PwD and PwBD candidates must be protected by ensuring that assessment of their capabilities is individualised, evidence-based, and free from stereotypical assumptions that have no scientific foundation.”

(emphasis added)

35.3. A three-Judge bench of the Hon’ble Supreme Court in ***Om Rathod Vs. Director General of Health Services, 2024 SCC OnLine SC 3130***, speaking through Dr. Justice Dhananjaya Y. Chandrachud, held as follows: -

**“28. Justice KV Viswanathan speaking for this Court in *Omkar Gond (supra)* has applied a purposive interpretation to the guidelines (Appendix "H-1") in the context of a medical aspirant with dialectic incapacity. This Court held that the principle of reasonable accommodation in Section 2(y) of the RPWD Act**



**read with Article 41 of the Constitution necessarily means that (i) a person cannot be disqualified merely on the basis of a benchmark quantification. Such a criteria would be unconstitutional for being overbroad;** (ii) the Disability Assessment Board must not act as monotonous automations looking at the quantified disability and disqualifying candidates. The Board must examine if the candidate can pursue the course with their disability; and (iii) in doing so, the Board is not merely obliged to provide assistive devices and other substances which will help the candidate. The true role of the Board is to assess the competence of a candidate.

29. The principle of reasonable accommodation is not only statutorily prescribed but also rooted in the fundamental rights guaranteed to persons with disabilities under Part III of the Constitution. **Reasonable accommodation is a fundamental right. It is a gateway right for persons with disabilities to enjoy all the other rights enshrined in the Constitution and the law. Without the gateway right of reasonable accommodation, a person with disability is forced to navigate in a world which excludes them by design. It strikes a fatal blow to their ability to make life choices and pursue opportunities.** From mundane tasks of daily life to actions undertaken to realise personal and professional aspirations - all are throttled when reasonable accommodations are denied. Reasonable accommodation is a facet of substantive equality and its failure constitutes discrimination. In **Vikash Kumar v. UPSC, (2021) 5 SCC 370** this Court adjudicated on whether a person with a writer's cramp is entitled to a scribe for writing the examination. Allowing the use of a scribe, this Court held that the benchmark standard can only be applied where expressly stipulated. Section 2(s) of the RPWD Act defines a person with disability as a person with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders their full and effective participation in society equally with others. Therefore, a person - to be considered as a person with disability - does not have to qualify any benchmark. The principle that the rights and entitlements cannot be constricted by adopting a benchmark as a condition precedent was also upheld by this Court in **Avni Prakash v. NTA (2023) 2 SCC 286**.



*“47. When reasonable accommodation is denied to a person with disability, it amounts to discrimination and violates the fundamental rights of the aggrieved person and the preambular virtue of fraternity along with justice, liberty and equality. Persons with disability are not objects of pity or charity but an integral part of our society and nation. The advancement of rights for persons with disabilities is a national project along with eradication of all forms of discrimination. A component of this project is the inclusion of persons with disabilities in all pursuits of life.”*

(emphasis added)

36. Furthermore, in view of the constitutional philosophy, the Department of Personnel and Training, Ministry Of Personnel, Public Grievances and Pensions, Government of India has also issued the notifications dated 15.08.2018 and 17.05.2022, respectively, thereby granting relaxation in selection criteria for recruitment and promotion to candidates with disabilities, with respect to employment with the central government. Both the aforementioned notifications as well as the RPWD Act were considered by a Division Bench of the Delhi High Court in ***Munna Lal Yadav Vs. Department of Empowerment of Persons With Disabilities and others, W.P.(C) 7197/2021***. Speaking through Justice Naveen Chawla, the following was opined: -

*“45. Section 20 of the RPwD Act further mandates that the Government has to ensure that no Government establishment shall discriminate against any PwDs in any matter relating to employment, and shall provide reasonable accommodation and appropriate barrier free and conducive environment to employees*



*with disability. It shall ensure that no promotion shall be denied to a person merely on the ground of disability and no Government establishment shall dispense with or reduce in rank an employee who acquires a disability during his or her service.*

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48. *The “Reasonable Accommodation” is defined in Section 2(y) of the RPwD Act, as under:*

*“(y) “reasonable accommodation” means necessary and appropriate modification and adjustments, without imposing a disproportionate or undue burden in a particular case, to ensure to persons with disabilities the enjoyment or exercise of rights equally with others.”*

49. **A reading of the above provisions together, therefore, establishes that every Government Establishment is to ensure that there inter alia should not be any restriction on an employee on the basis of the disability, and necessary and appropriate relaxations and adjustments, without imposing disproportionate or undue burden on the employers, should be made, in particular to ensure that the PwD enjoys or exercises rights at par with others.**

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56. **From the above, it would be evident that the RPwD Act requires a relaxed standard to be adopted as far as the PwDs or PwBDs are concerned. The Supreme Court has further held that in case enough suitable candidates are not available after selection, further relaxation can be done in assessing the suitability of the candidate.**

*This is also the mandate of the Office Memorandums dated 15.01.2018 and 17.05.2022 issued by the DoPT, which prescribe as under:*

**“11. RELAXATION OF STANDARD OF SUITABILITY:**

*11.1 If sufficient number of candidates with benchmark disabilities candidates are not available on the basis of the general standard to fill all the vacancies reserved for them, candidates belonging to this category may be selected on relaxed standard to fill up the remaining vacancies reserved*



*for them provided they are not found unfit for such post or posts. However, this provision shall not be used to allow any relaxation in the eligibility criteria laid down for the issuance of certificate of disability.*

*11.2 Same relaxed standard should be applied for all the candidates with Benchmark Disabilities whether they belong to Unreserved/SC/ST/OBC. No further relaxation standards will be considered or admissible in favour of any candidate from a category whatsoever.”*

**Office Memorandum Dated 17.05.2022:**

**“8. RELAXATION OF STANDARD OF SUITABILITY:**

*8.1. If sufficient number of PwBD candidates with benchmark disabilities are not available on the basis of the prescribed standard to fill the vacancies (in case of promotion through Limited Departmental Competitive Examination/Departmental Examination, etc.) reserved for them, candidates belonging to this category may be selected on relaxed standard to fill up the remaining vacancies reserved for them, provided they are not found unfit for such post or posts. However, this provision shall not be used to allow any relaxation in eligibility criteria laid down for the issuance of certificate of benchmark disability.*

*8.2 The same relaxed standard should be applied for all the PwBD candidates with benchmark disabilities, irrespective of whether they belong to the Unreserved/ SC/ ST/ OBC category. No further relaxation of standards will be considered or admissible in favour of any candidate for any category whatsoever.”*

37. Moreover, learned counsel for the respondents, respectively, have relied upon the judgment rendered by a Division Bench of this Court in *Sachin Kumar*'s case (*supra*) to submit that the qualifying marks for the respective Subject Knowledge Tests, could not be reduced below



35%. The emphasis therein was placed on the condition that standards may be relaxed for persons with disabilities if the candidate is otherwise qualified for the post, which can only be determined by the employer-State. It was also highlighted that no enabling statute or policy was brought to the fore that would allow the Commission to reduce the minimum qualifying marks. Additionally, it was observed that concessions cannot be granted at every stage, thereby compromising administrative efficiency. However, it appears that Division Bench was not apprised of the notifications issued by the Government of India providing relaxation in selection criteria for persons with disabilities and the discussion of '*reasonable accommodation*' in the context of Sections 2(y), 3(5) and other provisions of RPWD Act.

38. In the cases at hand, no relaxations were provided at any stage of the selection process to persons with disabilities. The grievance is not directed at the adequacy or fairness of the relaxation granted to the petitioners, but at the total denial of any relaxation, which is *ex facie* contrary to the constitutional guarantees and the mandate of RPWD Act. Furthermore, specific instructions were issued by the employer-State as well as Union of India advocating for reasonable accommodations to be provided by granting relaxations in selection criteria while recruiting the persons with disabilities. However, without providing any explanation for



it, the instructions have been arbitrarily superseded. Rather, by selectively reading the same, provisional appointment letters were issued to two persons from amongst the able-bodied candidates, against the posts reserved for persons with disabilities. It is a clear case of overreach when the matter is *sub judice* before this Court.

### CONCLUSION

39. In view of the aforementioned discussion, the question framed above is answered in the following terms: -

***“Implementing relaxation in selection standards for persons with disabilities in order to provide them reasonable accommodations, in terms of Sections 2(y) & 3(5) of the RPWD Act, does not violate Articles 14 & 16 of the Constitution of India. If the selection process carried out on strict equal terms in a mechanical manner, the cause of substantive equality would fail. Thus, providing differential treatment to the persons with disabilities treatment to remove disadvantage does not violate Articles 14 and 16 of the Constitution. The State bears the responsibility to remove barriers that obstruct genuine opportunities for persons with disabilities and such relaxation ensures that equality becomes real, meaningful and transformative***



***rather than merely formal and illusory. As such, the relaxation in selection criteria for persons with disabilities is not a concession but a constitutional obligation to achieve substantive equality in furtherance of Article 14, 16, 21 of the Constitution and the statutory framework of the RPWD Act.”***

40. Accordingly, all the aforementioned petitions are allowed in the following terms: -

- (i) The Chief Secretary to the Government of Haryana is directed to form a Committee to fix the extent of relaxation in selection criteria that can be provided to candidates with disabilities, in the light of the notifications dated 15.08.2018 and 17.05.2022 issued by the Department of Personnel and Training, Government of India and the judgments of the Hon'ble Supreme Court in ***In re: Recruitment of Visually Impaired in Judicial Services's*** case (*supra*), ***Vikash Kumar's*** case (*supra*) and ***Om Rathod's*** case (*supra*). The Committee shall be constituted within 02 weeks from the date of receipt of a certified copy of this order. Further, the Committee is directed to finalize the relaxed norms within a period of 04 weeks of its constitution and communicate their



conclusion to the Chief Secretary to the Government of Haryana.

- (ii) Further, the report of the Committee shall be sent to the respondent-Commission within a period of 02 weeks. Upon receiving the recommendation of the Committee regarding relaxation in selection criteria for candidates with disabilities, the respondent-Commission is directed to reconsider the case of the petitioner(s) and whether they breach the threshold of the relaxed norms. In case they are found successful on the relaxed norms, they be recommended for appointment to the respondent-HSPCB within a period of 02 weeks from the date of receipt of the report of the Committee.
- (iii) The respective Chief Secretaries to the Governments of Punjab, Haryana and U.T. Chandigarh are directed to formulate clear and comprehensive instructions regarding grant of relaxations in selection criteria to realize the mandate of the RPWD Act, in terms of the constitutional philosophy. The respective Chief Secretaries shall ensure that the relaxed norms in selection criteria are implemented in all future recruitment processes carried out within their jurisdiction.



- (iv) The Chief Secretaries to the Governments of Punjab, Haryana and U.T. Chandigarh are also directed to file a compliance report by way of affidavit of a responsible officer, within 03 months from the date of receipt of a certified copy of this order.
- (v) A copy of this order be supplied to the respective learned State counsels for the State of Haryana and Punjab as well as learned Senior Standing counsel for the Union Territory of Chandigarh for information and compliance.

41. The pending miscellaneous application(s), if any, shall be disposed of.

42. Photocopy of this order be placed on the files of connected cases.

**[ HARPREET SINGH BRAR ]**  
**JUDGE**

27.02.2026  
*vishnu*

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No