



2025:DHC:7544-DB



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

***Reserved on: 31.07.2025***

***Pronounced on: 01.09.2025***

+ LPA 754/2023 & CM APPLs. 59983-84/2023

ASHWIN MURLI ....Appellant

Through: Mr. Ankur Chhibber, Adv  
(Amicus Curiae) along with the  
appellant present in person.

versus

OIL AND NATURAL GAS CORPORATION LTD & ORS.

....Respondents

Through: Mr.Chetan Sharma, ASG with  
Mr.Vikramaditya, Mr.Sidhant  
Kumar, Mr.Om Batra, Mr.Amit  
Gupta, Mr.R.V. Prabha,  
Mr.Vinay Yadav, Mr.Naman &  
Mr.Shubham Sharma, Advs for  
R-1 & R-2  
Mr.Atul Krishna, SPC with  
Mr.Gokul Sharma, GP for R-3

**CORAM:**

**HON'BLE MR. JUSTICE NAVIN CHAWLA**

**HON'BLE MS. JUSTICE RENU BHATNAGAR**

### **J U D G M E N T**

**NAVIN CHAWLA, J.**

1. This appeal has been filed, challenging the Order dated 10.10.2023 passed by the learned Single Judge in W.P.(C) 13279/2023, titled *Ashwin Murli vs. Oil and Natural Gas Corporation Ltd. & Ors.*, dismissing the petition filed by the appellant



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herein and holding as under:

*“34. In light of the foregoing discussions, this Court dismisses the instant petition on the ground that the letter dated 6th December 2022 wherein the petitioner was denied employment being medically unfit is not violative of rights, since the respondent no.1 has acted in compliance with its statutory rules. Furthermore, this Court by way of issuing writ of mandamus cannot direct the respondent no.1 to issue guidelines/rules for employment of the candidates with hearing loss of less than 40%, since such power vests with the executive/ legislature, since the same would amount to transgressing the power of this Court under its writ jurisdiction.”*

### **FACTS OF THE CASE**

2. To give a brief background of facts in which the present appeal arises, the appellant appeared in the Graduate Aptitude Test in Engineering (GATE) Instrumentation Engineering Paper, 2020, a nationwide competitive examination used by the Public Sector Enterprises (PSEs) to recruit graduate engineers in technical disciplines. The appellant claims to have secured good marks in the same.

3. The appellant claims that due to the COVID 19 pandemic, the recruitment process of all PSEs was disrupted. It was only around February, 2021, that the appellant received an interview call from the National Aluminium Company Limited Corporate (NALCO) based on his score in the GATE, 2020. He was issued a provisional offer of appointment under the unreserved category for the post of Graduate



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Engineer Trainee (GET) in NALCO on 20.10.2021. However, he was disqualified during a pre-employment medical examination dated 01.11.2021, wherein he was declared ‘unfit’ due to a hearing impairment.

4. The appellant, thereafter, applied for a hearing disability certificate from the Lady Hardinge Medical College, which was not granted to him on the basis of an audiogram report dated 13.12.2021 which stated that he was ‘*not eligible for hearing disability certificate*’. This was owed to the fact that the appellant was having only 17% hearing impairment and did not meet the 40% disability required to be qualified for “benchmark disability”.

5. In the meanwhile, in February, 2021, Oil and Natural Gas Corporation Ltd. (ONGC)/respondent no. 1 also began their recruitment process by inviting applications for ‘Recruitment of Graduate Trainees in Engineering and Geo-Sciences Disciplines at E1 level through GATE- 2020’ *vide* Advertisement No. 2/2021 (R&P). The appellant applied under the same in the unreserved category and, on 27.10.2022, received a provisional offer for appointment letter for the post of Assistant Executive Engineer (AEE) Instrumentation from the ONGC, that is, the respondent no.1.

6. Fearing rejection on similar medical grounds like in case of NALCO, the appellant pre-emptively filed a complaint in November, 2022, with the National Human Rights Commission (NHRC). The complaint was registered as Case No. 7481/30/9/2022.



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7. The appellant was, as feared, declared 'unfit' for the post of AEE by the ONGC on account of 'Profound Sensorineural Hearing Loss' in the right ear, and his provisional appointment was cancelled by the respondent no.1 *vide* a letter dated 06.12.2022.

8. The NHRC eventually closed the case, with the following finding:

*"The Commission has considered the matter on record. Without going into merits of the claims/submissions made herein by ONGC, DoPT and DEPwD qua issues raised by this Commission in particular lack of clarity on affirmative actions for a persons with the disabilities(PwD) having less than 40% specific disability in matter of employment under Government of India/PSUs/Other institutions, the Commission is of view that primarily matter concerning issues of PwD having disability less than benchmark of 40% needs formulation of policy or the issue is to be adjudicated by appropriate court. Hence, the Commission directs its Registry to close the instant case."*

9. Aggrieved of the above, the appellant filed a Writ Petition under Article 32 of the Constitution of India before the Supreme Court, being W.P. (C) No.627 of 2023. The same was disposed of, *vide* Order dated 24.07.2023, granting him liberty to approach the High Court.

10. Thereafter, the appellant approached this Court *vide* Writ Petition, that is, W.P. (C) 13279/2023, challenging the order dated 06.12.2022 cancelling the offer of appointment of the appellant to the post of AEE (Instrumentation) and seeking a direction to respondent



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No.1 to reinstate the appellant's appointment to the said post, as well as review its medical examination policy. The same has, however, been dismissed by the learned Single Judge by way of the Impugned Judgment.

11. Being aggrieved of the Impugned Judgment, the appellant has filed the present appeal.

### **SUBMISSIONS FOR THE APPELLANT**

12. While the appellant appears in-person and has argued his case, *vide* Order dated 30.07.2024, this Court had also requested Mr. Ankur Chhibber, learned Counsel, to act as Amicus Curiae and to argue the case of the appellant.

13. Mr. Ankur Chhibber, the learned Amicus Curiae, submits that the appellant is in a bewildering situation wherein, on account of being 17% hearing impaired, he is neither able to avail of the safeguards of being a Person with Disability nor is he being considered eligible for employment as an unreserved candidate owing to his disability. He states that this has resulted in a circumstance wherein an individual with more than 40% benchmark disability can avail of the reservation and obtain appointment, whereas the appellant, who has succeeded in the unreserved category is being denied employment on account of him being 17% disabled.

14. The learned Amicus Curiae points out that the Rights of Persons with Disabilities Act, 2016 (RPwD Act) has laid down three distinct categories of individuals which come within its purview. These are:



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‘persons with disability’ (PwD) under Section 2(s), ‘persons with benchmark disability’ (PwBD) under Section 2(r), and ‘persons with disability having High Support Needs’ under Section 2(t). He highlights that while Chapters VI and VII of the RPwD Act deal specifically with PwBD, as stipulated under Section 2(r), the rest of the provisions, including the right to reasonable accommodation as provided under Sections 3 and 20 of the RPwD Act, apply to a broader category of PwDs. He submits that therefore, benchmark disability is not a precondition to avail rights under the RPwD Act. To this effect, reliance is placed on the Judgements of the Supreme Court in **Vikash Kumar vs. Union Public Service Commission and Ors.**, (2021) 5 SCC 370, **Avni Prakash vs. National Testing Agency (NTA) & Others**, (2023) 2 SCC 286, and of the High Court of Bombay at Goa in **Nigel Antony S. Fernandes vs. State of Goa and Ors**, 2022 SCC OnLine Bom 661.

15. Placing reliance on the Judgement of the Supreme Court in **Ravinder Kumar Dhariwal & Anr. vs. Union of India & Ors.**, (2023) 2 SCC 209, he submits that the principle of reasonable accommodation is a means of achieving substantive equality and that, despite being a PwD under Section 2(s) of the RPwD Act, and having secured the 12<sup>th</sup> rank in the unreserved category merit list, no reasonable accommodation as mandated under Sections 3 and 20 of the RPwD Act has been provided to the appellant.

16. He submits that while fourteen (14) unreserved category posts



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and nine (9) PwBD posts were advertised by the respondents, none of the PwBD posts have been filled. He submits that even the carry forward rule provided in the Advertisement No. 2/2021 (R&P) stipulates that if no suitable PwBD candidates were available, the carry forward vacancies could be filled up by persons other than those with benchmark disability. He states that the appellant ought to have been considered against the same.

17. He submits that even otherwise, the denial of employment to the appellant violates Articles 14, 16(1) and 21 of the Constitution of India, as the appellant has been subjected to discrimination purely on grounds of disability, despite demonstrating superior merit.

18. He submits that the appellant has merely challenged his cancellation of appointment letter and not the recruitment process as a whole, therefore, the principle of estoppel does not apply to him.

19. The appellant in-person submits that he has not misguided or, at any stage, hidden his disability from the respondents. He submits that, in fact, he himself, at the time of applying under the Advertisement No. 2/2021 (R&P), was not aware of his hearing impairment and got to know about the same only when he was disqualified from recruitment to the post of GET in NALCO during his pre-employment medical examination dated 01.11.2021. He states that he, thereafter, sent an email to the respondents on 13.11.2021, duly informing them about his disability, and requested that he be considered under the PwD Category. He states that subsequently, he attempted to avail a



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disability certificate but was denied the same on account of not meeting the benchmark requirement. He states that despite all his efforts, his offer for appointment was cancelled by the respondents on account of Profound Sensorineural Hearing Loss in the right ear.

20. He further points out that even in the proceedings before the NHRC, it was crystallised that his 17% hearing disability would not hinder his ability to perform the day-to-day function attached to the post of AEE (Instrumentation). He submits that therefore, his offer of appointment ought not to have been cancelled.

### **SUBMISSIONS OF THE LEARNED COUNSEL FOR THE RESPONDENTS**

21. Mr. Chetan Sharma, the learned ASG, submits that the appellant voluntarily participated in the recruitment process for the post of AEE (Instrumentation) under the unreserved category, and was adequately warned and informed of the medical fitness requirements at different stages throughout the recruitment process, including in the advertisement itself, in the interview call letter dated 08.02.2022, and in the provisional appointment letter dated 27.10.2022. He submits that the Cancellation Letter dated 06.12.2022 was issued strictly in accordance with aforementioned medical requirements duly communicated to the appellant.

22. He submits that no challenge has been laid to the advertisement or the ONGC Medical Examination of Employees Rules, 1996, which in Clause VII(e)(4)(i) specifically prescribes that “**Bilateral Nerve**





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**Deafness:** Not acceptable for all categories”. He submits that therefore, there is a complete bar on employment of any person suffering from Bilateral Nerve Deafness and because of the same, the petitioner was declared medically ‘unfit’ for appointment.

23. He submits that it is trite law that an individual having consciously participated in a selection process, is estopped from challenging the same. He places reliance to this effect on the Judgements of the Supreme Court in *Union of India and Ors. vs. Dalbir Singh and Anr.*, (2009) 7 SCC 251, and *Rekha Sharma vs. Rajasthan High Court, Jodhpur and Anr.*, 2024 SCC OnLine SC 2109; and of this Court in *Jyoti Yadav and Anr. vs. Govt. of NCT of Delhi and Ors.*, 2010 SCC OnLine Del 2779, *Sarika vs. Delhi Subordinate Services Selection Board & Ors.*, 2025:DHC:1189-DB, and *Comptroller and Auditor General of India vs. Amit Yadav and Another*, 2025 SCC OnLine Del 3932.

24. Placing reliance on the Judgement of the Supreme Court in *Tajvir Singh Sodhi vs. State of Jammu and Kashmir*, 2023 SCC OnLine SC 344, he submits that it is settled law that a party cannot be permitted to approbate and reprobate in the same breath.

25. He states that the respondent is bound by Section 34 of the RPwD Act and compliance therewith and, therefore, accommodates PwDs in administrative functions such as data entry and desk jobs. He submits that, however, the AEE (Instrumentation) post involves field visits, and the safety of the project as well as the subject visiting the



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project has to be taken into consideration by the respondents at the time of appointment. He submits that PwBDs recruited in these posts are, in fact, always accompanied by unreserved category employees or placed at office as they are not fit to visit the fields.

26. He highlights that the appellant did not disclose his disability to the respondents and consciously applied under the unreserved category. He states that as such, the appellant being fully aware of the medical standards, on which there was no doubt, could not thereafter be considered for grant of reasonable accommodation under the RPwD Act. He states that reasonable accommodation cannot be made in a scenario wherein strict and clear medical standards have been consciously prescribed. He submits that to this extent the Judgements of Supreme Court in *Vikash Kumar* (supra) and *Avni Prakash* (supra), as cited by the appellant, can be distinguished.

27. He submits that the Judgement of *Nigel Anthony* (supra), as relied upon by the appellant, is not applicable to the facts in the present case in-as-much as in the said recruitment process, there was no set medical criteria and the DGP himself had subsequently certified the petitioner therein as fit to do the job.

### **ANALYSIS AND FINDING**

28. We have considered the submissions made by the learned counsels for the parties.

29. It is not denied that pursuant to the application made by the appellant, the appellant was offered the position of AEE



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(Instrumentation) by the respondent no.1/ONGC. The recruitment Advertisement No.2/2021 (R&P) advertised fourteen (14) unreserved and nine (9) reserved posts for the benchmark disability categories. For the post of AEE (Instrumentation), the benchmark disability, *inter alia*, included a person with hearing disability.

30. The nine (9) posts reserved for the person with benchmark disability, included six (6) posts that had been carried forward from Advertisement No. 3/2019 (R&P). It was further prescribed that if the suitable candidates from respective benchmark disabilities are not available, then PwBD candidates of other benchmark disabilities may be considered by interchange of category among identified suitable benchmark disabilities, and if no suitable PwBD candidates even by interchange of benchmark disabilities is available, the carried forward vacancies can be filled up with candidates other than PwBDs.

31. The reserved post further included two (2) posts that had been carried forward from Advertisement No.3/2019 (R&P) and Advertisement No.3/2018 (R&P). It was prescribed that if the suitable candidates from respective benchmark disabilities are not available for these posts, then PwBD candidates of other benchmark disabilities may be considered by interchange of category among identified suitable benchmark disabilities, and if no suitable PwBD candidates even by interchange of benchmark disabilities is available, the carried forward vacancies can be filled up with candidates other than PwBDs.

32. Admittedly, in the impugned selection process, the posts



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reserved for PwBDs remained unfilled and therefore, in terms of the above stipulations, were now to be offered to persons other than with benchmark disabilities and to unreserved category candidates.

33. In our view, this is a vital fact which has been lost sight of by the learned Single Judge in its Impugned Judgment.

34. The RPwD Act defines ‘person with disability’ in Section 2(s); ‘person with benchmark disability’ in Section 2(r); and ‘person with disability having high support needs’ in Section 2(t), as under:

“2. Definitions. ...

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(r) “person with benchmark disability” means a person with not less than forty per cent of a specified disability has not been defined in measurable terms and includes a person with disability where specified disability has been defined in measurable terms, as certified by the certifying authority;

(s) “person with disability” means a person with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others;

(t) “person with disability having high support needs” means a person with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others;”

35. As far as the general provisions applicable to all PwDs, Section 3 of the RPwD Act mandates that the appropriate Government shall ensure that PwDs enjoy the right to equality, life with dignity and are



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not 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. It further casts a duty on the appropriate Government to take steps to ensure reasonable accommodation to PwDs. We quote Section 3 as under:

*“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.”*

36. The term ‘reasonable accommodation’ has been 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;”*

37. Section 20 of the RPwD Act further mandates that no



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government establishment shall discriminate against any PwD in any matter relating to employment. The exemption to the above mandate is by way of empowering the appropriate government to, by notification, exempt any establishment, having regard to the type of work carried on in subject establishment and subject to such conditions, if any, as may be stipulated in the notification. We quote Section 20 of the RPwD Act, as under:

*“20. Non-discrimination in employment.—(1) No Government establishment shall discriminate against any person with disability in any matter relating to employment:*

*Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, exempt any establishment from the provisions of this section.*

*(2) Every Government establishment shall provide reasonable accommodation and appropriate barrier free and conducive environment to employees with disability.*

*(3) No promotion shall be denied to a person merely on the ground of disability.*

*(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.*

*(5) The appropriate Government may frame*



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*policies for posting and transfer of employees with disabilities.”*

38. Equally, Section 21 of the RPwD Act casts a duty on every establishment to notify equal opportunity policy, detailing measures proposed to be taken by it in pursuance of the provisions of Chapter IV of the Act as may be prescribed by the Central Government.

39. Chapter VI contains the special provisions for the PwBDs and Chapter VII contains the special provisions for PwDs with high support needs. By these provisions, the application of the general provisions applicable to PwDs are neither abrogated nor in any manner diluted.

40. In fact, while interpreting the provisions of the RPwD Act, the Court must keep in mind that the RPwD Act has been promulgated to implement the Convention on Rights of Persons with Disabilities adopted by the United Nations General Assembly on 13.12.2006, which lays down the following principles for empowerment of persons with disabilities:

- “(a) respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;*
- (b) non-discrimination;*
- (c) full and effective participation and inclusion in society;*
- (d) respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;*
- (e) equality of opportunity;*
- (f) accessibility;*
- (g) equality between men and women;*
- (h) respect for the evolving capacities of*



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*children with disabilities and respect for the right of children with disabilities to preserve their identities.”*

41. In **Vikash Kumar** (supra), the Supreme Court highlighted that mere presence of special provisions with regard to PwBDs and ‘person with disability having high support needs’, does not in any manner take away the rights of PwDs conferred under the RPwD Act, by holding as under:

*“40. Conflating the rights and entitlements which inhere in persons with disabilities with the notion of benchmark disabilities does disservice to the salutary purpose underlying the enactment of the 2016 RPwD Act. Worse still, to deny the rights and entitlements recognised for persons with disabilities on the ground that they do not fulfil a benchmark disability would be plainly ultra vires the 2016 RPwD Act.*

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*42. The fundamental postulate upon which the 2016 RPwD Act is based is the principle of equality and non-discrimination. Section 3 casts an affirmative obligation on the Government to ensure that persons with disabilities enjoy: (i) the right to equality; (ii) a life with dignity; and (iii) respect for their integrity equally with others. Section 3 is an affirmative declaration of the intent of the legislature that the fundamental postulate of equality and non-discrimination is made available to persons with disabilities without constraining it with the notion of a benchmark disability. Section 3 is a statutory recognition of the constitutional rights embodied in Articles 14, 19 and 21 among other provisions of Part III of the Constitution. By recognising a statutory right and entitlement on the part of persons who are disabled, Section 3 seeks to*





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*implement and facilitate the fulfilment of the constitutional rights of persons with disabilities.*

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*56. It gives a powerful voice to the disabled people who, by dint of the way their impairment interacts with society, hitherto felt muted and silenced. The Act tells them that they belong, that they matter, that they are assets, not liabilities and that they make us stronger, not weaker. The other provisions of Chapter II follow upon the basic postulates embodied in Section 3 by applying them in specific contexts to ensure rights in various milieus such as community life, reproduction, access to justice and guardianship. Chapter III of the 2016 RPwD Act recognises specific duties on the part of educational institutions. Section 17 speaks of specific measures to promote and facilitate inclusive education. Among them, Clause (g) contemplates the provision of books, learning materials and assistive devices for students with benchmark disabilities free of cost up to the age of eighteen. Section 17(i) requires suitable modifications in the curriculum and examination system to meet the needs of students with disabilities such as: (i) extra time for completion of examination (ii) the facility of scribe or amanuensis (iii) exemption from second and third language courses. The guarantee under Section 17(i) is not confined to persons with benchmark disabilities but extends to students with disabilities. It is thus evident that the legislature has made a clear distinction between disability and benchmark disability. Section 20 provides a mandate of non-discrimination in employment. Under Section 21, every establishment is under a mandate to notify equal opportunity policies setting out the measures which will be adopted in pursuance of the provisions of Chapter IV. Chapter V provides guarantees for social*



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*security, health, rehabilitation and recreation to persons with disabilities.*

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*66. As the Committee on the Rights of Persons with Disabilities (“the CRPD Committee”) noted in General Comment 6, reasonable accommodation is a component of the principle of inclusive equality. It is a substantive equality facilitator. The establishment of this linkage between reasonable accommodation and non-discrimination thus creates an obligation of immediate effect. Under this rights-based and disabled-centric conceptualisation of reasonable accommodation, a failure to provide reasonable accommodation constitutes discrimination. Reasonable accommodation determinations must be made on a case-by-case basis, in consultation with the disabled person concerned. Instead of making assumptions about how the relevant barriers can be tackled, the principle of reasonable accommodation requires dialogue with the individual concerned to determine how to tackle the barrier.”*

42. The above principles were reiterated by the Supreme Court in ***Avni Prakash*** (supra), holding as under:

*“38. These rights and entitlements which are conferred upon PwD cannot be constricted by adopting the definition of benchmark disability as a condition precedent or as a condition of eligibility for availing of the rights. “Benchmark disability”, as defined in Section 2(r), is specifically used in the context of Chapter VI. Undoubtedly, to seek admission to an institution of higher education under the 5% quota, the candidate must, in terms of*



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*Section 32(1) [ Section 32 reads as follows: “**32. Reservation in higher educational institutions.**—(1) All Government institutions of higher education and other higher education institutions receiving aid from the Government shall reserve not less than five per cent. seats for persons with benchmark disabilities.(2) The persons with benchmark disabilities shall be given an upper age relaxation of five years for admission in institutions of higher education.”] , fulfil the description of a PwBD. But equally, where the statute has conferred rights and entitlements on PwD, which is wider in its canvass than a benchmark disability, such rights cannot be abrogated or diluted by reading into them the notion of benchmark disability. This has been clarified in the judgment of this Court in *Vikash Kumar* where its was observed thus:*

*“37. Both as a matter of textual construction and bearing in mind the purpose and object underlying the term, it is necessary to emphasise that the definition in Section 2(s) cannot be constricted by the measurable quantifications tagged with the definition under Section 2(r).*

\* \* \*

*39. The concept of benchmark disabilities under the 2016 RPwD Act has specifically been adopted in relation with the provisions of Chapter VI and Chapter VII. Chapter VI contains special provisions for persons with benchmark disabilities. Among those provisions is Section 31 (free education for children with benchmark disability), Section 32 (reservation in higher educational institutions), Section 33 (identification of posts for reservation), Section 34 (reservation), Section 36 (Special Employment Exchange)*



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*and Section 37 (Special Schemes and Development Programmes). Chapter VII contains special provisions for persons with benchmark disabilities in need of high support. Thus, the concept of benchmark disabilities has been adopted by the legislation bearing in mind specific provisions which are contained in the law for persons meeting this description.*

*40. Conflating the rights and entitlements which inhere in persons with disabilities with the notion of benchmark disabilities does disservice to the salutary purpose underlying the enactment of the 2016 RPwD Act. Worse still, to deny the rights and entitlements recognised for persons with disabilities on the ground that they do not fulfil a benchmark disability would be plainly ultra vires the 2016 RPwD Act.”*

*(emphasis supplied)*

*39. In Vikash Kumar, the UPSC placed reliance on the Civil Services Examination Rules, 2018 to submit that only PwBD can be provided with the facility of a scribe. This Court held that the petitioner was entitled to reasonable accommodation in the form of being provided with the facility of a scribe for writing the UPSC examination even if he did not suffer from a benchmark disability. It is evident that despite the clarification of the position in law in Vikash Kumar, the law continues to be violated and NTA has continued to restrict the grant of facilities only to PwBD. By way of abundant caution, we reiterate that the facility of reservation in terms of Section 32 is available to PwBD. Other facilities contemplated by the RPwD Act, 2016 for PwD cannot be so restricted by an administrative order which would be contrary to the provisions of the statute.*



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43. Above all, the RPwD Act, 2016 contains provisions mandating reasonable accommodation. The expression “reasonable accommodation” is defined in Section 2(y), which reads as under:

“2. (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;”

The right to inclusive education is realised through the provision of reasonable accommodation. In *Vikash Kumar*, this Court emphasised that reasonable accommodation is at the heart of the principle of equality and non-discrimination espoused under the RPwD Act, 2016. The denial of reasonable accommodation to a PwD amounts to discrimination. It is the positive obligation of the State to create the necessary conditions to facilitate the equal participation of disabled persons in society. This Court observed thus :

“44. 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



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*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.”*

43. In ***Mohamed Ibrahim vs. The Chairman & Managing Director & Ors.***, 2023 INSC 914, the Supreme Court dealt with a case concerning the cancellation of appointment of the appellant therein from the post of Assistant Engineer in the Tamil Nadu Generation and Distribution Corporation Limited (TNGEDCO) on the ground that he suffered from colour blindness. The Supreme Court, while setting aside the cancellation of appointment, highlighted that even though the appellant therein did not fall within categories defined under the RPwD Act or possess the requisite benchmark disability, he would still be eligible to protection and reasonable accommodation under the RPwD Act. It was opined as under:

*“20. ...The facts of this case demonstrate that the appellant is fit, in all senses of the term, to discharge the duties attached to the post he applied and was selected for. Yet, he is denied the position, for being “disabled” as he is colour blind. At the same time, he does not fit the category of PWD under the lexicon of the universe contained within the Act. These challenges traditional understandings of what constitute “disabilities”. The court has to, therefore, travel beyond the provisions of the Act and discern a principle which can be rationally applied.*

*21. In Jeeja Ghosh v. Union of India this court observed:*



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*“40. 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 antidiscrimination 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.”*

*22. Ravinder Kumar Dhariwal v. Union of India highlighted on the right to equality and underlined the two aspects: formal equality and substantive equality. It stated that substantive equality aims at producing equality of outcomes, and in the context of the case, observed that 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.” The court recollected Vikash Kumar v. Union Public Service Commission, which held as follows “The principle of reasonable accommodation acknowledges that if disability” should be remedied and opportunities are “to be affirmatively created for facilitating the*



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*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 individual's dignity and worth is respected.”*

*23. It was also noted that provisions of Chapters VII and VIII of the Act are in furtherance of the principle of reasonable accommodation which is a component of the guarantee of equality. This has been recognised by a line of precedent. This court, in multiple cases has held that the principle of reasonable differentiation, recognising the different needs of persons with disabilities is a facet of the principle of equality.*

*24. The significant impact of Vikash Kumar (supra) is that the case dealt with a person with a chronic neurological condition resulting in Writer's Cramp, experiencing extreme difficulty in writing. He was denied a scribe for the civil services exam by the UPSC, because he did not come within the definition of person with benchmark disability (40% or more of a specified disability). This court, rejected this stand, and held him to be a person with disability. It was also stated that the provision of scribe to him fell within the scope of reasonable accommodation. The Court said:*

*“... the accommodation which the law mandates is 'reasonable' because it has to be tailored to the requirements of each condition of disability. The expectations which every disabled person has are unique to the nature of the disability and the character of the impediments which are encountered as its consequence...”*





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25. *The appellant is, for all purposes, treated as a person with disability, but does not fall within the categories defined in the Act, nor does he possess the requisite benchmark eligibility condition. The objective material on the record shows that the colour vision impairment is mild. Yet, TANGEDCO's concerns cannot be characterised as unreasonable. However, TANGEDCO is under an obligation to work under the framework of "reasonable accommodation", which is defined by Section 2 (y) as follows:*

*"(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;.."*

26. *Reasonable accommodation thus, is "appropriate modification and adjustments" that should be taken by the employer, in the present case, without that duty being imposed with "disproportionate or undue burden". TANGEDCO- the employer expresses its willingness to accommodate the appellant. Yet the position it offers, is highly inadequate: that it is belated, is beside the point. In the considered view of this court, the post offered, i.e., Junior Assistant, is inconsistent with the appellant's qualification which cannot be offered to him; the offer is a mere palliative gesture, which he justifiably rejected.*

27. *TANGEDCO, during the hearing was unable to show how it employing the appellant in one of the many departments or units [as AE (Material Management) or AE (CAUP) in the office of the Executive Engineer or even as AE (General) in the office of the SE or as AE (General)] is not possible. The hierarchy of*



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*posts further indicates that the primary inspection responsibilities of technical nature are upon Junior Engineers, who oversee the work of Technical Assistants, and that of Linemen. It is evident that the AE works at a position of overseeing supervisory work of Junior Engineers. This could involve, at the field stage, satisfaction after visual inspection. Sufficient safeguards (whenever the appellant's services in that regard are absolutely essential, and he is deployed on some occasions) can be taken, to ensure that he is accompanied by those without any colour vision deficiencies or impairments. TANGEDCO's units and organizational structure, in this court's opinion, have sufficient possibility for accommodating the appellant in a unit or department which may not require utilization of skills that involve intense engagement with colour. As stated earlier, these are AE (General) in SE office, AE (CAUP) in EE office; AE (Material Management). The TANGEDCO, is under an obligation to ensure that the appellant is therefore, suitably accommodated in any such general department or establishment.*

*28. In view of the foregoing discussion, the impugned judgment cannot stand; it is set aside. TANGEDCO, the respondent corporation, is directed to appoint and continue the appellant in its service, as AE (Electrical) at the appropriate stage of the grade of pay, from the date he was terminated from service, or his appointment was cancelled, and accommodate him in a suitable department, where he can be given appropriate responsibilities. The appellant shall also be entitled to 50% of full arrears of salary, and all allowances, and his service shall be reckoned from the original date of appointment, (which was later cancelled), with*



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*full continuity. The appeal is allowed in these terms, without order on costs.”*

44. The Supreme Court in ***Re: Recruitment of Visually Impaired in Judicial Services***, 2025 INSC 300, has further held that the RPwD Act although passed in order to comply with the Convention on the Rights of Persons with Disabilities, is in fact a super statute and contains the ingredients of a quasi-constitutional law. It has held that the principle of reasonable accommodation is not a discretionary measure, but a fundamental right integral to achieving substantive equality for PwDs, forming part of the right to dignity as guaranteed under Article 21 of the Constitution of India. It was stated that no candidate can be denied consideration solely on account of their disability and that any indirect discrimination that results in the exclusion of PwDs, whether through rigid cut-offs or procedural barriers, must be interfered with in order to uphold substantive equality. It was opined as under:

*35. Thereafter, the United Nations Convention on the Rights of Persons with Disabilities was adopted in 2006 to which India is a signatory. Pursuant thereto, the RPwD Act, 2016 came to be passed. While it is true that the RPwD Act, 2016 came to be passed as part of fulfilment of India's obligations under the treaty implementation regime and was enacted by the Parliament under Article 253 of the Constitution, the fact that 'disability' as a ground is not specifically stated under Article 15 of the Constitution, would not mean that the same is not part of the constitutional obligations of the State. The provisions under section 32 and section 34 of the RPwD Act,*



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2016 would also be a clear indication that similar to the State's obligations to provide for special protection including in the form of reservation for socially and educationally backward classes in educational institutions as well as in employment as stated in Articles 15 and 16 of the Constitution, the State has taken up the obligation of providing similar protection including reservation in respect of PwD. In view of the same, it can now be said that it is high time that an antidiscrimination clause be included in the Constitution with a specific provision that the State shall not discriminate on the grounds of mental or physical disability in line with the principles as stated in the RPwD Act, 2016. At this juncture, it is relevant to point out that as many as 70 countries out of 189 contain 'disability' as one of the grounds mentioned specifically in the constitutional provisions containing the anti-discrimination clause.

36. In this context, it is also relevant to mention that the RPwD Act, 2016 today has acquired the status of a 'super statute'. The term 'super statute' was first applied in 2001 by William N. Eskridge and John A. Ferejohn to characterise an ordinary statute that not only reveals intention but also establishes a new normative or institutional framework in the public culture and has a broad effect on the law. As a result, such statutes have a quasi-constitutional significance that exceed its former status as a statute. In the words of the authors, "these super-statutes penetrate the public normative and institutional and institutional culture". Applying this test, it can safely be said that the RPwD Act, 2016 has acquired the status equal to that of a 'super-statute' and hence, contains the ingredients of a quasi-constitutional law.

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40. ... Thus, these rulings underscore the principle that reasonable accommodation is



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*not a discretionary measure, but a fundamental right integral to achieving substantive equality for PwD, forming part of the right to dignity as guaranteed under Article 21 of the Constitution. It is also worthy to mention that the 73rd and 74th Amendments of the Constitution of India made it a Constitutional obligation for the State to make provisions for safeguarding the interest of the weaker section of the society, including 'handicapped and mentally retarded'. Further, it is a well-established principle that the State has an obligation to apply the Directive Principles of securing a social order in promotion of the welfare of the people. The importance of Article 41 in the Constitutional scheme can be measured by this Court's judgment in Jacob M. Puthuparambil & others v. Kerala Water Authority and others, wherein, it was held that 'a Court should interpret an Act so as to advance Article 41'. Therefore, Article 41 of the Constitution which is in the nature of a Directive Principle, imposes a duty on the State to make an effective provision, inter alia, for public assistance to disabled persons.*

*41. The spirit of the RPwD Act, 2016 would reveal that the principle of reasonable accommodation is a concept that not only relates to affording equal opportunity to the PwD but also it goes further as to ensuring the dignity of the individual by driving home the message that the assessment of a person's suitability, capacity and capability is not to be tested and measured by medical or clinical assessment of the same but must be assessed after providing reasonable accommodation and an enabling atmosphere. The judgement of this Court in Vikash Kumar (supra) assumes increased significance in this regard. This Court in this case has expounded in detail the principle of reasonable accommodation by invoking the social model of disability. In*



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*response to the judgement, the Department of Disability Affairs, Government of India has notified guidelines for availing of scribes by all persons with specified disabilities to appear in written examinations thereby widening the ambit of its earlier guidelines issued in 2018 confining this privilege only to persons with benchmark disabilities. Very importantly, while overruling the earlier decision in Surendra Mohan (supra), this Court has held that any decision which is innocent to the principle of reasonable accommodation would amount to disability-based discrimination and is also in deep tension with the ideal of inclusive equality. After the judgement which has focused on a rights-based model and rejection of the medicalisation of the disability in order to assess the suitability and capability of PwD, the “suspicion ridden medical expertise driven model”, is directly opposed to the principle as laid down by this court and also the spirit of the RPwD Act, 2016.*

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*67. The overall analysis would demonstrate that a rights-based approach necessitates that PwDs must not face any discrimination in their pursuit of judicial service opportunities, and instead, there must be affirmative action on behalf of the State to provide an inclusive framework. Now, it is high time that we view the right against disability-based discrimination, as recognized in the RPwD Act 2016, of the same stature as a fundamental right, thereby ensuring that no candidate is denied consideration solely on account of their disability. Further, as extensively discussed, the principle of reasonable accommodation, as enshrined in international conventions, established jurisprudence, and the RPwD Act, 2016, mandate that accommodations be provided to PwDs as a prerequisite to assessing their eligibility. In the light of the*



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*above, any indirect discrimination that results in the exclusion of PwDs, whether through rigid cut-offs or procedural barriers, must be interfered with in order to uphold substantive equality. The commitment to ensuring equal opportunity necessitates a structured and inclusive approach, where merit is evaluated with due regard to the reasonable accommodations required, thereby fostering judicial appointments that truly reflects the principles of fairness and justice.”*

45. In **Nigel Anthony** (supra), the High Court of Bombay at Goa also observed as under:

*“ 50. The contentions of Mr. Arolkar and Ms. Mordekar do not appeal to us having regard to the factual material on record as also the legal position in such matters. True, the petitioners had never applied against any posts reserved for persons with disabilities, Ms. Mordekar's submission that the petitioners have not demonstrated that they are persons with benchmark disability as defined under Section 2(r) of the RPwD Act, may also be perhaps correct, But surely, having regard to the material placed on record by the respondents themselves, the petitioners are persons with disabilities as defined under Section 2(s) of the RPwD Act.*

*51. Section 2(s) of the RPwD Act provides that a person with a disability means a person with long-term physical, mental, intellectual, or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others, It is based on such disability that the respondents have sought to deny the appointments to the petitioners, Since there is no material on record to say that the extent of disability exceeds 40 percent, at least prima*



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*facie, the petitioners may not be entitled to the benefits of the special persons contained in Chapter VI of the RPwD Act. However, that does not mean that the petitioners are not even entitled to the protection of Section 3 or Sections 20 and 21 of the RPwD Act.*

*52. Section 3 of the RPwD Act deals with equality and nondiscrimination and provides that the appropriate Government shall ensure that persons with disabilities enjoy the right to equality, life with dignity, and respect for his or her dignity equally with others. This Section requires the appropriate Government to take steps to utilize the capacity of persons with disabilities by providing an appropriate environment. Section 3(3) is quite important and provides that no person with a disability shall be discriminated against on the ground of disability unless it is shown that the impugned act or omission is a proportionate means of achieving a legitimate aim. Section 3(5) is also important and provides that the appropriate Government shall take necessary steps to ensure reasonable accommodation for persons with disabilities.*

*53. Section 20 of the RPwD Act deals with non-discrimination in employment. Section 20(1) provides that no Government establishment shall discriminate against any person with a disability in any matter relating to employment. The Proviso to this clause empowers the appropriate Government, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, exempt any establishment from the provisions of this clause. Admittedly, no such notification has been issued by the appropriate Government when it comes to the Forensic Science Laboratory of the Police Department.*

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*68. In Union of India v. National Federation of the Blind - (2013) 10 SCC 772 the Hon'ble*





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*Supreme Court has held that employment is a key factor in the empowerment and inclusion of people with disabilities. It is an alarming reality that disabled people are out of jobs not because their disability comes in the way of their functioning rather it is social and practical barriers that prevent them from joining the workforce. As a result, many disabled people live in poverty and deplorable conditions. They are denied the right to make a useful contribution to their own lives and the lives of their families and community.”*

46. From the above, it would be evident that though the respondent no.1, in terms of the provisions of Sections 33 and 34 of the RPwD Act, had made the required reservation of the post for PwBDs, it would not absolve it from also ensuring non-discrimination in employment mandated under Section 20 of the RPwD Act and Section 3 of the RPwD Act as far as PwDs candidates are concerned nor will it absolve it to make “reasonable accommodation” for PwDs.

47. Section 33 of the RPwD Act provides for identification of the posts in an establishment which can be held by respective PwBD in respect of the vacancies reserved for them under Section 34 of the RPwD Act. Section 34 of the RPwD Act provides for reservation of not less than 4% of the total number of vacancies in the cadre strength in each group of post meant to be filled with PwBD. Section 34(2) of the Act provides for the carry forward rules and de-reservation of such posts on no eligible candidate being found for the same for two consecutive recruitment years. Section 34(2) of the RPwD Act reads as under:



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*“(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.”*

48. In the present case, the impugned advertisement also prescribes the stipulation with respect to de-reservation of the post in accordance with Section 34(2) of the RPwD Act.

49. The appellant may not be a PwBD but there is no dispute that, with a 17% hearing impairment, he is a PwD. To give effect to the mandate of Section 3 and Section 20, it would be in the fitness of things that the post which has been reserved for PwBD, instead of being surrendered to an unreserved category candidate, is given to a PwD, like the appellant. This would fulfil the object of the RPwD Act as enunciated in the principles laid down in the UN Convention and reproduced hereinabove.

50. The plea of the learned ASG that the post in question is not fit



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for a person with hearing impairment, cannot be accepted. The Advertisement No. 2/2021 (R&P) itself identifies the post to be fit for person with PwBD of hearing impairment, which means that for a person who has more than 40% of such disability. It cannot, therefore, be accepted that a person with 17% of hearing disability cannot hold such post, or that the respondent no.1 as an employer shall have to make special arrangement for accommodating the appellant.

51. As far as the submission of the learned ASG that the appellant having participated in the selection process cannot challenge the Advertisement No. 2/2021 (R&P), while there can be no dispute on the same as a principle of law, however, this principle of law is subject to certain exceptions; one being that the said advertisement is against the recruitment rules or violative of Article 14 of the Constitution of India. There cannot be an estoppel against law. There can also be no waiver against fundamental rights. Reliance can be placed on the Judgments of the Supreme Court in ***Dr. (Major) Meeta Sahai vs. State of Bihar & Ors.***, 2019 INSC 1387, and in ***Krishna Rai (Dead) Through legal representatives and Ors. vs. Banaras Hindu University and Ors.***, (2022) 8 SCC 713.

52. In the present case, while the appellant does not meet the stipulation of medical standards applied to unreserved candidates, can it be said that the mandate of the RPwD Act will be served if the post meant for PwBD candidate, due to non-availability of such candidate, be de-reserved and surrendered to unreserved category candidate



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rather than being given to the appellant who is a PwD. The answer has to be in the negative, as this would certainly defeat the mandate and object of the RPwD Act. To serve the mandate and object of the RPwD Act, the post must be offered to the appellant who is a PwD candidate, in preference to unreserved candidate.

53. On the issue of concealment by the appellant, the appellant has explained that he became aware of his disability only post appearing for GATE and making an application for recruitment to the respondent no.1. He has further stated that immediately on coming to know of his disability, he informed the same to the respondent no.1 and even took steps for seeking enforcement of his right as a PwD candidate. We, therefore, are of opinion that the appellant cannot be accused of concealing information for applying for recruitment.

54. We are aware that giving relief to the appellant may in turn be violative of the rights of other such candidates who may not have applied for the post knowing their disability would not meet the PwBD mark, however, given the special circumstances of the present case, in which the post would now become unreserved and fall to a unreserved category, we make an exception to this rule, while directing the respondent no.1 to consider the candidature of the appellant for appointment to the post of AEE (Instrumentation).

55. In view of the above, the Impugned Judgment dated 10.10.2023 of the learned Single Judge in W.P.(C) 13279/2023 is hereby set aside.

56. The letter dated 06.12.2022 issued by the respondent no.1



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cancelling the candidature of the appellant for the post of AEE (Instrumentation), is also set aside.

57. The respondent no.1 is directed to consider the appellant as a qualified unreserved category candidate against a post which would otherwise have been unreserved due to non-availability of PwBD candidate in the subject Advertisement, and if found fit on other parameters, except of him not meeting the 40% benchmark disability or failing to meet the medical standards, to offer him employment as a AEE (Instrumentation).

58. The above exercise must be completed by the respondent no.1 within a period of four weeks from today.

59. In case the appellant is offered appointment as AEE (Instrumentation) by the respondent no.1, the appellant shall gain his seniority and other benefits only from the date of his appointment and not retrospectively.

60. With the above directions, the appeal along with the pending applications is disposed of.

61. There shall be no order as to costs.

62. We express our gratitude to Mr. Ankur Chhibber, learned *Amicus Curiae*, for assisting us in this appeal.

**NAVIN CHAWLA, J.**

**RENU BHATNAGAR, J.**

**SEPTEMBER 1, 2025/ns/ik**