



Right to Reservation in Promotions for PwDs

Why in News

The [Supreme Court of India](#) has recently held that [persons with physical disabilities](#) have the right to [reservation in promotions](#) also.

- A disabled particular person can avail the advantage of [reservation](#) for promotion even when she or he was recruited within the common class or developed the incapacity after gaining employment.

Key Points

▪ About the Case:

- The case was based on a claim under the **Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995**.
 - This Act has been **replaced with the Rights of Persons with Disabilities Act 2016**.
- The **Kerala Administrative Tribunal rejected the plea** of applicant stating that the **rule of Recruitment in the State of Kerala, General Rules and other orders** issued by the Government **under Section 32 of the 1995 Act did not provide for any reservation in promotions**.
- The **Kerala High Court set aside the decision** of the Kerala Administrative Tribunal.

▪ Importance of Judgement:

- The **1995 Act recognizes the right to reservation in promotion**.
- **Identification of posts for reservation** as per Section 32 of the 1995 Act is a **prerequisite for appointment**; but appointment cannot be frustrated by refusing to identify posts.
- The **absence of provision for reservation in the recruitment rules will not defeat the right of a PwD** as such right flows from the legislation.
- Reservation to promotion **can be given to a PwD even if the person was not originally appointed in the PwD quota**.
- Further, the **responsibility to provide equal opportunities** to disabled persons **does not end with giving them reservation at the time of recruitment**.
- Legislative mandate **provides for equal opportunity for career progression, including promotion**.
 - Thus, it would be negation of the legislative mandate if promotion is denied to PwD and such reservation is confined to the initial stage of induction in service.
 - This would in fact result in stagnation of the disabled in a consequential frustration.

▪ Right of Persons with Disabilities Act 2016:

- It fulfills the obligations to the [United National Convention on the Rights of Persons with Disabilities \(UNCRPD\)](#), to which **India is a signatory**.
- **Disability has been defined** based on an evolving and dynamic concept.

- The **types of disabilities have been increased from 7 to 21.**
 - The Act added mental illness, autism, spectrum disorder, cerebral palsy, muscular dystrophy, chronic neurological conditions, speech and language disability, thalassemia, hemophilia, sickle cell disease, multiple disabilities including deaf blindness, acid attack victims and Parkinson's disease which were largely ignored in earlier act.
 - In addition, the Government has been authorized to notify any other category of specified disability.
 - It **increases the quantum of reservation** for people suffering from disabilities from 3% to 4% in government jobs and from 3% to 5% in higher education institutes.
 - Every child with benchmark disability between the age group of 6 and 18 years shall have the **right to free education.**
 - Government funded educational institutions as well as the government recognized institutions will have to provide inclusive education.
 - Stress has been given to ensure **accessibility in public buildings** in a prescribed time frame along with the [Accessible India Campaign](#).
 - The **Chief Commissioner for Persons with Disabilities** and the **State Commissioners** will act as **regulatory bodies and Grievance Redressal agencies**, monitoring implementation of the Act.
 - A **separate National and State Fund** will be created to provide financial support to the persons with disabilities.
- **Constitutional Framework for Disabled in India:**
- **Article 41 of the Directive Principles of State Policy (DPSP)** states that State shall make effective provision for securing right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, within the limits of its economic capacity and development.
 - **State Subject:** The subject of '**relief of the disabled and unemployable**' is specified in the [state list of the Seventh Schedule](#) of the constitution.

Source: TH