

CWP-11291-2025

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IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

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Date of Decision: **August 08, 2025**

Jaswinder Singh

.....Petitioners

**VERSUS**

Punjab State Power Corporation Ltd and others

.....Respondents

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

Present : Mr. Pawan Kumar Sr. Advocate with Mr. Vidushi Kumar,  
Advocate for the petitioner.

Mr. Bhanu Pratap Singh, Advocate for respondents No.1 and 2-  
PSPCL.

Ms. Arundhati Kulshreshtha, AAG, Punjab.

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**HARPREET SINGH BRAR, J. (Oral)**

1. The present writ petition has been filed under Article 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing of the speaking order dated 11.03.2025 (Annexure P-18) and further prayed for issuance of a writ in the nature of mandamus directing respondents No.1 and 2 to promote the petitioner to the post of Assistant Engineer, Electrical in the 4% quota under physically handicap (in short 'PH') category as juniors of the petitioner have already been promoted on 16.07.2023 (Annexure P-5).

2. Learned counsel for the petitioner *inter alia* contends that the juniors to the petitioner have been promoted, whereas, the petitioner has been denied the promotion to the post of Assistant Engineer Electrical meant for persons with disabilities in view of Sections 33 and 34 of Rights of

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Persons with Disabilities Act, 2016 (in short 'RPWD Act'). The case of the petitioner is identical with the other persons who have been promoted in the physically handicap category. Initially the petitioner was appointed to the post of Junior Engineer under the Schedule Class category in the respondent-Corporation on 17.06.2014. Thereafter, the petitioner met with a motor vehicle accident and has suffered serious injuries which caused the petitioner's permanent disability to the extent of 75 per cent. The petitioner has been issued a disability certificate on 18.10.2019, by Chief Medical Officer, Sangrur (Annexure P-3). Further, on 26.02.2021, the respondent-Corporation published a tentative seniority list of technical subordinates, in which the petitioner was placed at Sr. No.612, whereas, three persons namely Sh.Amardeep Singh, Sh. Sonu Sharma and Sh.Amar Singh were placed at Sr. Nos. 638, 660 and 629 respectively, have been promoted vide office order No.140/BEG-I, dated 16.07.2023 under physically handicap category, leaving behind the petitioner.

3. Further, being aggrieved, petitioner had submitted multiple representations for seeking similar benefit as has been granted to the juniors of the petitioner in the handicap category. Thereafter, the petitioner approached this Court by filing CWP No.31808 of 2024 and vide final order dated 26.11.2024 this Court has directed the respondent-Corporation to consider and decide the claim made by the petitioner in representation dated 27.08.2024 in accordance with law, by passing a speaking order. Further, the petitioner has laid a specific reliance upon the judgment passed by this Court in ***CWP-20174 of 2023, Sukhmandar Singh Versus Punjab State Power Corporation Limited and others rendered on 23.08.2024*** in the aforesaid

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representation. However, while passing the speaking order, enigmatically no reference has been made to the judgment relied upon by the petitioner or to the specific instances and the judicial precedents relied upon by the petitioner. Rather, it has been conveyed to the petitioner in the speaking order that the Government of Punjab has sought clarification vide letter dated 22.06.2023 from the Government of India, that the matter of adopting the instructions issued by Govt. of India, whereby it was stated that the persons who acquired disability during his/her service is entitled to get benefits of reservation as a PwD is still under consideration and his case would be considered for the promotion after the clarification is received from the Government of Punjab (Annexure P-18). Further, it is stated in the Annexure P-18 at para-10 that no person junior to the petitioner has been promoted under schedule caste category.

4. Learned counsel further refers to representations (*Annexures P-8 and P-12*) and his representation was sent to Executive Engineer Distribution Division, Sunam vide Endst No.4764 dated 13.11.2019 for further necessary action. Thereafter, communication was made between the concerned authorities of the respondent-Corporation regarding entry of the petitioner in handicap category in the seniority list. On 11.02.2020, the Superintending Engineer, Distribution Circle, Sangrur sent letter to Senior Executive Engineer, Distribution Division, Sunam, demanding the documents to prepare the tentative seniority list of the Junior Engineer (Elect.) for the period w.e.f 01.05.2010 to 31.12.2012, regarding entry under handicapped category in seniority list of petitioner (Annexure P-9). Further, communication was addressed from Assistant Executive Engineer, PSPCL,

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Distribution Sub-Division Longowal to Senior Executive Engineer, Sunam, Udham Singh Wala stating therein that petitioner fall under 14% AMIE/ B.Tech Degree quota and on completion of three years of service in the month of October, 2017, the documents were sent to prepare the tentative seniority list of the degree holder Technical Subordinates for the period w.e.f. 01.01.2017 to 30.06.2017 (under SC category) by Distribution Division, Dhuri to Distribution Circle, Barnala and now petitioner has submitted his certificate regarding 75% disability along with his representation. Further, communication addressed by the Superintending Engineer, Distribution Circle, Sangrur to Joint Secretary, PSPCL, Patiala dated 28.08.2024 acknowledging the receipt of documents regarding the entry of petitioner in the handicapped category of the seniority list.

5. Moreover, the petitioner has specifically given the particulars of the juniors to him, who had been promoted in the physically handicapped category on 16.07.2023 (Annexure P-4). Further, petitioner has demonstrated his disability and also with regard to the communications as well as representations (Annexure P-8 to P-12 respectively). In the written statement filed by the respondent-Corporation there is no specific denial either to the promotions of the juniors of petitioner in the tentative list or to the averments contained in paras 6 and 9 of the writ petition. Further, the justification given in the reply by introducing new grounds, which cannot be relied upon in view of the settled law.

6. Learned Senior counsel further submits that petitioner has acquired disability while in service and his juniors mentioned in the tentative list have been promoted in the physically handicapped category. Learned

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Senior counsel for the petitioner has relied upon the judgments in the cases of (1) *Kunal Singh Versus Union of India and another*, 2003(4) SCC 524, (2) *Malkit Singh Versus State of Punjab and others*, Law Finder Doc Id # 2322245, (3) *Bhagwan Dass and another Versus Punjab State Electricity Board* 2008(1) SCC 579, (4) *State of Kerala and others Versus Leesamma Joseph* 2021(9)SCC 208, (5) *Rajeev Kumar Gupta and others Versus Union of India and others* 2016(13) SCC 153, (6) *Poonam Manchanda Versus Union of India and others*, Law Finder Doc Id #2007224 (7) *Sukhmandar Singh Versus Punjab State Power Corporation Limited and others*, CWP-20174-2023, date of decision 23.08.2024.

7. *Per contra*, Mr. Bhanu Partap Singh, Advocate representing respondents No.2 and 3 *per contra* submits that firstly the claim of the petitioner cannot be accepted, as the disability of the petitioner is not identifiable, secondly he has not applied in the handicapped category. Further, no employee juniors to the petitioner in the SC category had been promoted. Even if the case of the petitioner is considered under the physically handicapped category one more person namely Manjinder Singh who is senior to the petitioner, is yet to be promoted under the physically handicap category.

### **OBSERVATION AND ANALYSIS**

8. Having heard the learned counsel for the parties and after perusing the record with their able assistance, the primary issue that arises in the present case is whether the petitioner is entitled to be promoted under the PH category in light of the fact even though he has acquired the disability *during his service* and not at the time of appointment.

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9. The above issue is no longer *Res integra*, having been settled by a catena of authoritative pronouncements of the Hon'ble Supreme Court. However, before referring to the judgements, the relevant statutory provisions in this regard must be considered. Section 47 of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter '1995 Act'), which is replaced by Section 20 of the RPWD Act 2016, prohibits discrimination against Disabled persons in matters of Government Employment. Section 47 is reproduced hereinunder:

*“47. Non-discrimination in Government Employment - (1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service:*

*Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could 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.*

*(2) No promotion shall be denied to a person merely on the ground of his disability:*

*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, as may be specified in such notification, exempt any establishment from the provisions of this section.” (emphasis supplied)*

10. Likewise, Section 20 of the RPWD Act, 2016 also states that a promotion cannot be denied to a person merely on the ground of disability. A Two-Judge Bench of the Hon'ble Supreme Court in ***Kunal Singh v. Union of India, 2003 (1) SCT 1029***, speaking through Justice Shivaraj V.

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Patil has held as follows:

*“8. Chapter VI of the Act deals with employment relating to persons with disabilities, who are yet to secure employment. Section 47, which falls in Chapter VIII, deals with an employee, who is already in service and acquires a disability during his service. It must be borne in mind that Section 2 of the Act has given distinct and different definitions of "disability" and "person with disability". It is well settled that in the same enactment if two distinct definitions are given defining a word/expression, they must be understood accordingly in terms of the definition. It must be remembered that person does not acquire or suffer disability by choice. An employee, who acquires disability during his service, is sought to be protected under Section 47 of the Act specifically. Such employee, acquiring disability, if not protected, would not only suffer himself, but possibly all those who depend on him would also suffer. The very frame and contents of Section 47 clearly indicate its mandatory nature. The very opening part of Section reads "no establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service". The Section further provides that if an employee after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits; if it is not possible to adjust the employee against any post he will be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier. Added to this no promotion shall be denied to a person merely on the ground of his disability as is evident from sub-section (2) of Section 47. Section 47 contains a clear directive that the employer shall not dispense with or reduce in rank an employee who acquires a disability during the service. In construing a provision of social beneficial enactment that too dealing with disabled persons intended to give them equal opportunities, protection of rights and full participation, the view that advances the object of the Act and serves its purpose must be preferred to the one which obstructs the object and paralyses the purpose of the Act. Language of Section 47 is plain and certain casting statutory obligation on the employer to protect an employee acquiring disability during service.” (emphasis supplied)*

11. The judgement in **Kunal Singh** (supra) was followed in **Bhagwan Dass v. Punjab State Electricity Board, 2008 AIR SC 990.**

Further, in **Rajeev Kumar Gupta v. Union of India, (2016) 13 SCC 153**, a



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Two-Judge Bench of the Hon'ble Supreme Court speaking through Justice Chelameswar observed as follows:

*“24. A combined reading of Sections 32 and 33 of the 1995 Act explicates a fine and designed balance between requirements of administration and the imperative to provide greater opportunities to PWD. Therefore, as detailed in the first part of our analysis, the identification exercise under Section 32 is crucial. Once a post is identified, it means that a PWD is fully capable of discharging the functions associated with the identified post. Once found to be so capable, reservation under Section 33 to an extent of not less than three per cent must follow. Once the post is identified, it must be reserved for PWD irrespective of the mode of recruitment adopted by the State for filling up of the said post.” (emphasis supplied)*

12. In *The State of Kerala v. Leesamma Joseph*, 2021 AIR SC 3076, a Two-Judge Bench of the Hon'ble Supreme Court speaking through Justice S.K. Kaul held that:

*“27. Now coming to the question of the respondent not being initially appointed in the quota for PwD in the feeder cadre, we note that there is no dispute about the benchmark disability of the respondent. It would be discriminatory and violative of the mandate of the Constitution of India if the respondent is not considered for promotion in the PwD quota on this pretext. Once the respondent has been appointed, she is to be identically placed as others in the PwD cadre. The anomaly which would arise from the submission of the appellant-State is apparent - a person who came in through normal recruitment process but suffers disability after joining service would on a pari materia position be also not entitled to be considered to a vacancy in a promotional post reserved for a PwD. This is the consequence if the entry point is treated as determinative of the entitlement to avail of the benefits. Source of recruitment ought not to make any difference but what is material is that the employee is a PwD at the time for consideration for promotion. The 1995 Act does not make a distinction between a person who may have entered service on account of disability and a person who may have acquired disability after having entered the service. Similarly, the same position would be with the person who may have entered service on a claim of a compassionate appointment. The mode of entry in service cannot be a*



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ground to make out a case of discriminatory promotion.” (emphasis supplied)

13. Most recently, a two-Judge Bench of the Hon’ble Supreme Court in ***C.H Joseph v. The Telangana State Road Transport Corporation, 2025 INSC 920***, speaking through Justice Aravind Kumar observed that:

*“35. When a disability is acquired in the course of service, the legal framework must respond not with exclusion but with adjustment. The duty of a public employer is not merely to discharge functionaries, but to preserve human potential where it continues to exist. The law does not permit the severance of service by the stroke of a medical certificate without first exhausting the possibility of meaningful redeployment. Such obligation is not rooted in compassion, but in constitutional discipline and statutory expectation.*

*36. In light of this evolving doctrine, the Court in Mohamed Ibrahim clarified that employees with conditions like colour blindness, although not falling within the defined categories of the statute, must still be accommodated wherever their functional capacity permits. To do otherwise would result in a regressive interpretation of the law, undermining the very foundation of equal opportunity in public employment.*

*37. Thus, even though in the present case the Appellant had an enforceable right under a statutory industrial settlement—placing his claim on firmer footing—we find it necessary to reaffirm that even in the absence of such contractual rights, employees who acquire disabilities during service must not be abandoned or prematurely retired without being afforded a fair and reasonable opportunity for reassignment. The obligation to reasonably accommodate such employees is not just a matter of administrative grace, but a constitutional and statutory imperative, rooted in the principles of non-discrimination, dignity, and equal treatment.*

*38. This Court, therefore, affirms that beneficial and remedial legislation must not be diluted by narrow interpretation, and the protections offered therein must be extended purposively to protect the livelihood, dignity and service continuity of employees who acquire disabilities during employment. In doing so, we not only vindicate the Appellant’s rights but also reaffirm our constitutional commitment to a just and humane employer-employee relationship.”* (emphasis supplied)

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14. From the above-mentioned judgments, it is clear that the benefit of reservation in promotion under the PH category cannot be confined only to those who are inducted in service in the PH category. Employees such as the petitioner, who acquire disability *during their service* are also entitled to be considered for promotion against the available disabled quota. A humane approach is imperative in such cases, for an employee who acquires a disability during the course of service is entitled to protection under Section 47 of the 1995 Act or, as the case may be, under Section 20 of the RPwD Act, 2016. As observed by the Hon'ble Supreme Court, denial of such protection would not only cause undue hardship to the employee but also inflict suffering upon the dependents who rely on him for their sustenance. In light of the clear enunciation of law, the sole consideration is whether the employee stood disabled at the time of promotion.

15. In the instant case, the petitioner has been issued a disability certificate on 18.10.2019, by Chief Medical Officer, Sangrur (Annexure P-3) stating that his case is of 'Locomotor Disability.' He has 75% permanent disability in relation to his left upper limb. Thus, the argument of the learned counsel for the Respondents that the petitioner's disability is not 'identifiable' cannot be accepted. Furthermore, the Respondents in their written statement have not specifically denied the fact that employees who were junior to the petitioner have been promoted under the ***PH category*** vide order dt. 16.07.2023 (Annexure P-5). Rather, the learned Counsel for the Respondents has curiously argued that no employee junior to the petitioner in the ***SC category*** had been promoted.

16. The Respondents vide the impugned speaking order dated

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11.03.2025 (Annexure P-18) conveyed to the petitioner that the question of whether a person who acquired disability during service is entitled to get benefits of reservation as a PwD is still under consideration and that his case will be considered for promotion after the clarification is received from the State Government. This Court is of the opinion that any clarification by the Government cannot supersede the legislative and judicial mandate in this regard. Section 47 of the 1995 Act and Section 20 of the RPWD Act, 2016 expressly state that no establishment shall dispense with, or reduce in rank, an employee who acquires a disability *during his service* and that no promotion shall be denied to a person merely on the ground of his disability. Further, the Hon'ble Supreme Court has clearly held that the Employer cannot draw a distinction between employees who entered service under the PH category and those who acquired disability in the course of service especially in the matters of promotion.

17. Further, the contention of the learned counsel for the Respondents that the Petitioner did not apply for promotion under the handicapped category cannot be sustained. The record reflects that the Petitioner had submitted multiple representations seeking the benefit of promotion, which was in fact extended to his juniors in the PH category. Despite having several opportunities to consider the Petitioner's claim for promotion under the PH category, the Respondents failed to grant him the benefit. The contention of the learned counsel is also liable to be rejected in view of the judgment of a co-ordinate Bench of this Court in **CWP-3403-2015** titled as *Vinod Kumar v. Dakshin Haryana Bijli Vitran Nigam, Hisar and others*, decided on 02.08.2016, which has attained finality as the Letters

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Patent Appeal as well as the Special Leave Petition filed against it having been dismissed. The operative part of the said judgment, reads as follows:

*“4. The only reason assigned to deny the petitioner promotion is that he did not submit his representation for promotion by the cut off date i.e. July 31, 2011. This is a specious plea based on an improper premise that one must ask for promotion like a beggar otherwise he will be denied consideration. Since all the material facts relating to the petitioner are in his service book and available in custody of the promoting authority it remains under bounden duty to place his name in the DPC for its consideration to make recommendations. In any case, in the matter of seniority and promotions there can be no discrimination in passing by names without valid reason. The right to seniority is a shared right with others. In the impugned order it is not disputed that respondents No.5 & 6 are junior to the petitioner. It is no argument or defence that the petitioner's name was added in the revised ranking list of 2011 after he made a representation in the matter. The petitioner has been wrongly ignored for promotion when his juniors were considered and promoted.” (emphasis supplied)*

18. Moreover, the additional grounds now sought to be urged by the Respondents to justify the denial of promotion, which do not find mention in the impugned speaking order dated 11.03.2025 (Annexure P-18), cannot be taken into consideration. It is well settled by the Constitution Bench of the Hon’ble Supreme Court in ***Mohinder Singh Gill v. Chief Election Commissioner, (1978) 1 SCC 405***, that the validity of an order must be tested on the reasons stated therein, and the same cannot be supplemented or improved upon by fresh reasons advanced in affidavits or otherwise. Para 8 of the judgement is reproduced hereinunder:

*“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of*

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*Bose, J. in Gordhandas Bhanji:*

“Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.”

*Orders are not like old wine becoming better as they grow older.”*  
(emphasis supplied)

19. In view of the foregoing discussion, the present writ petition is allowed. The Petitioner, having acquired disability during service, is entitled to promotion under the PH category. Indubitably, the Respondents have made no denial regarding the suitability of the petitioner for the promotion. Accordingly, the Respondents are directed to grant the Petitioner promotion under the PH category, along with all consequential benefits, from 16.07.2023, i.e., the date on which the juniors of the petitioners were promoted under the PH category within a period of 8 weeks from the date of receipt of this order.

20. Pending miscellaneous application(s), if any, shall also stands disposed of.

**(HARPREET SINGH BRAR)**  
**JUDGE**

**August 08, 2025**

P.C            Whether speaking/reasoned. :    Yes/No  
                  Whether Reportable. :        Yes/No