

Webinar Summary - Understanding the High Court Judgement on MS-Adv.R.K.Handoo

The Story: What Happened to Preeti?

- **Applying for the Job:** In 2021, Preeti Vaid applied for a government job through the Staff Selection Commission (SSC) under the quota reserved for people with disabilities.
- **Her Condition:** Preeti has **Multiple Sclerosis (MS)**—a disease affecting the brain and nervous system—which also damaged her optic nerve and gave her low vision. Official medical certificates rated her total disability at **45%** (30% from MS and 15% from low vision).
- **The Rejection:** Preeti passed all three rounds of exams. However, during document verification, officials rejected her. Their reason? They claimed Multiple Sclerosis was not specifically listed under the rules for job reservations.

The Legal Battle & High Court Decision

- **The Fight Back:** Preeti's legal team went to court, arguing two main points:
 1. Multiple Sclerosis is officially recognized as a disability under Indian law.
 2. The law requires at least **40% disability** (called a "benchmark disability") to qualify for job quotas. Preeti easily passed this mark by combining her MS and low vision under the "Multiple Disabilities" category.
- **What the High Court Ruled:** The Delhi High Court ruled in Preeti's favor.
- **The Takeaway:** The court stated that disability laws are meant to **help** people, not exclude them through technicalities. Government employers must interpret the rules broadly so that qualified candidates with valid disability certificates receive the benefits they deserve.

Simple Guide to the Law & Procedures

1. Specified vs. Benchmark Disability

- **Specified Disability:** Any condition officially listed in the law's Schedule (like MS, low vision, hearing loss, or physical disability).
- **Benchmark Disability:** Having **40% or more** of a specified disability. You must cross this 40% mark to qualify for government job reservations.

2. Can MS Qualify for Reservation?

- Yes.
As Multiple Sclerosis is a specified disability under the RPWD Act, the person with MS having 40% or more disability is entitled to reservations in government jobs under **Section 34 of the Rights of Persons with Disabilities (RPWD) Act, 2016**
- If MS alone is rated below 40%, you can still qualify under the "**Multiple Disabilities**" rule if you have related issues (like vision or mobility problems) that add up to 40% or more combined.

3. How to Get a Disability Certificate for MS

- **Application:** Fill out **Form IV** and submit it to your district government hospital with residence proof and photos.
- **Timeframe:** By law, the medical board must verify your application and issue the certificate within **1 month**.
- **Which Forms Are Used?**
 - **Form VI:** Used if you have more than one condition (Multiple Disabilities).
 - **Form VII:** Used if you have MS alone as a single condition.
- **Does it expire?** No. Permanent disability certificates for MS do not require frequent renewals or re-tests.

What to do if the Govt Department/Public Sector Banks (PSBs) and Public Sector Undertakings (PSUs) fail to provide the said reservation to the PwMS?

In case the Govt Department/Public Sector Banks (PSBs)/Public Sector Undertakings (PSUs) fail to provide the said reservation to the PwMS, the PwMS can file a Writ Petition & make the concerned Govt Department/Public Sector Banks (PSB)/Public Sector Undertaking (PSU) and also the Ministry of Social Justice and Empowerment, GOI., as respondents to the said Writ Petition. And quote for reference the Preeti Vaid's case

A LAWYER'S INTERPRETATION

Q1: What are the facts of Preeti Vyas's case, and why was her employment application rejected initially?

A: Preeti Vaid applied in 2021 for a job advertisement issued by the Staff Selection Commission (SSC) for recruitment to posts reserved for Persons with Disabilities. She possessed a valid disability certificate certifying that she had a cumulative 45% disability (comprising 30% MS-related brain demyelination with left optic neuropathy and 15% low vision). Despite passing all three tiers of selection, the authorities rejected her during document verification. They claimed that Multiple Sclerosis (MS) was not a specified/recognized disability eligible for job reservations under Section 34 of the Rights of Persons with Disabilities Act, 2016.

Q2: How did Advocate Handoo challenge this rejection before the Central Administrative Tribunal (CAT) and High Court?

A: Advocate Handoo issued a legal notice and subsequently filed a petition before the CAT, arguing that:

- * Multiple Sclerosis is explicitly recognized under the Schedule of Specified Disabilities in the RPWD Act, 2016.

- * Under Section 34, reservation covers candidates with a "benchmark disability" (minimum 40%).

- * Preeti's certificate met the benchmark by combining low vision and MS (demyelination/optic neuropathy), satisfying the legal test under Section 34 for multiple disabilities (Clauses (d) and (e) under Section 34(1) of the RPwD Act, 2016).

Q3: What did the High Court decide regarding the government's duty under Section 34 of the RPWD Act?

A: The High Court affirmed CAT's ruling in favor of Preeti Vaid. It held that Section 34 imposes a legal obligation and duty on state authorities and public employers to implement reservations generously. Employers cannot deny reservations through restrictive or hyper-technical interpretations of the law when a candidate holds a valid benchmark disability certificate.

It was argued on behalf of Preeti Vaid that she met the benchmark by combining low vision and MS (demyelination/optic neuropathy), satisfying the legal test under Section 34 for multiple disabilities (Clauses (d) and (e) under Section 34(1) of the RPwD Act, 2016).

Clause (d) refers to autism, intellectual disability, specific learning disability and mental illness; and clause (e) refers to multiple disabilities from amongst persons under clauses (a) to (d) including deaf-blindness in the posts identified for each disabilities.

If we look at paragraph 26 of the judgment, the High Court says "... we find no error in the view adopted by the Tribunal (CAT) that a person suffering from multiple sclerosis, which is at the very least a neurodevelopmental disorder, can also be treated as a person with "mental illness" for the purposed of Section 34(1) of the Act". [In my opinion, this interpretation is factually problematic as MS is neither a (neuro)'developmental disorder' nor a mental illness, even if some PwMS may experience symptoms that affect that moods and mental health generally. Nonetheless,]

The Court seems to have taken this broad interpretation to be able to read the narrowly worded language of the list of disabilities from (a) to (e) under Section 34(1) of the RPwD Act, 2016 to include MS in the list of disabilities entitled to reservations under the provisions.

Relying on past precedents, the judgment is guided by the principle that “courts have to interpret the provisions of the RPwD Act keeping in mind the philosophy of the statute and with a view to include as many persons who suffer from disability within the scope of the statute as possible”.

Q4: How does Section 34 of the RPWD Act, 2016 define reservation in government jobs?

A: Section 34 mandates that every appropriate government establishment reserve not less than 4% of total vacancies for persons with benchmark disabilities. This 4% is distributed across specific categories (1% each for blindness/low vision, deaf/hard of hearing, locomotor disabilities, autism/intellectual disabilities, and multiple disabilities listed under clauses (a) to (e), which are as follows

- 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; multiple disabilities from amongst persons under clauses (a) to (d) including deaf-blindness in the posts identified for each disability:

As we can see, the language of the provision does not have a category under which MS can neatly fit.

Q5: What is a "Benchmark Disability," and how does it relate to "Specified Disability"?

A:

* Specified Disability [Section 2(zc)]: Refers to the conditions specifically listed in the Schedule of the Act (which includes Multiple Sclerosis under chronic neurological conditions, along with visual, physical, and speech impairments).

* Benchmark Disability [Section 2(r)]: Refers to a person suffering from not less than 40% of a specified disability. Only individuals meeting or exceeding this 40% threshold qualify for statutory benefits like Section 34 job reservations.

Thus, any person having a specified disability which has been assessed at 40% or more, is a person with a benchmark disability.

Q6: If a person has Multiple Sclerosis with less than 40% disability, can they still qualify for job reservations?

A: If MS alone is assessed at less than 40%, a person cannot be said to have a benchmark disability. If MS alone is assessed at more than 40%, this would be a case of a benchmark disability. An individual can also be said to have a benchmark disability if they have overlapping or secondary conditions (such as low vision, optic neuropathy, or locomotor issues). Under Category E (Multiple Disabilities), the cumulative percentage of all specified conditions combined can cross the 40% threshold to qualify for reservation benefits.

Q7: What is the official procedure under the RPWD Rules 2017 to apply for a Disability Certificate for MS?

A: Under Rule 17, an applicant must fill out Form IV and submit it to the district medical authority or designated government hospital where they reside or undergo treatment, along with proof of residence and passport photos.

Q8: What is the timeline and responsibility of the Medical Board once an application is submitted?

A: Under Rule 18, the medical authority is legally bound to verify the information, assess the disability percentage according to central government guidelines, and issue the certificate within one month of receiving the application.

Q9: Which specific certificate forms are issued for Multiple Sclerosis or Multiple Disabilities?

A:

* Form VI: Issued for cases involving Multiple Disabilities (Multiple Sclerosis is explicitly listed under Serial No. 17).

* Form VII: Issued for single specified disabilities other than those covered in Form 5 and 6 (Multiple Sclerosis is listed under Serial No. 15).

Q10: Does a disability certificate issued under these rules require frequent renewal or reassessment?

A: No. Under Rules 19 and 20, once a competent medical authority issues a permanent disability certificate, it remains valid for the period specified in the certificate in case of temporary disabilities. In the case of MS, normally a permanent certificate of disability may be issued which does not need to be periodically reassessed or revived.

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