

**COMPENDIUM OF BRIEF OF JUDGMENTS DELIVERED BY
HON'BLE SUPREME COURT, HIGH COURTS AND
ADMINISTRATIVE TRIBUNALS**

OBJECTIVE OF 2016 ACT

<u>S. No</u>	<u>Citation</u>	<u>Notes</u>
1.	<p>JUSTICE SUNANDA BHANDARE FOUNDATION v. UNION OF INDIA (2017) 14 SCC 1 - SC</p> <p>HELD – We have referred to certain provisions only to highlight that the 2016 Act has been enacted and it has many salient features. As we find, more rights have been conferred on the disabled persons and more categories have been added. That apart, access to justice, free education, role of local authorities, National fund and the State fund for persons with disabilities have been created. The 2016 Act is noticeably a sea change in the perception and requires a march forward look with regard to the persons with disabilities and the role of the States, local authorities, educational institutions and the companies. The statute operates in a broad spectrum and the stress is laid to protect the rights and provide punishment for their violation.</p>	Paras- 29 and 30

SCOPE OF POWERS OF COMMISSIONER UNDER ACT

<u>S. No</u>	<u>Citation</u>	<u>Notes</u>
2.	<p>STATE BANK OF PATIALA v. VINESH KUMAR BHASIN (2010) 4 SCC 368 - SC</p> <p>HELD – Complainant cant use disability tag to terrorise the authorities when no prima facie case is made out. The fact that the respondent claimed to be a person with disability appears to have swayed the chief commissioner and the High Court to ignore the absence of any legal right and grant an interim remedy.</p>	Paras- 29 and 30
3.	<p>THE SHIPPING CORPORATION OF INDIA v. HARIPADA SHAILESHWAR CHATERJEE 2016 SCC OnLine Bom 9562 – BOMBAY HC</p> <p>HELD – Commissioner's power are confined to take up the matter with appropriate authority and did not extend to passing or issuing directions.</p>	
4.	VAISHALI VALMIK BAGUL v. SECRETARY, PRERNA TRUST	

	2013 (5) Mah LJ 221 – BOMBAY HIGH COURT HELD – Reiterated Vinesh Kumar Case and Haripada Shaileshwar Chaterjee Case and held that Commissioner’s power are confined to take up the matter with appropriate authority and did not extend to passing or issuing directions.	
5.	GEETABEN RATILAL PATEL v. DISTRICT PRIMARY EDUCATION OFFICER (2013) 7 SCC 182 – SUPREME COURT HELD - Commissioner under Disability Act has jurisdiction and power to set aside order of dismissal. Court further held that power of commissioner are not empty formalities and Commissioner has to apply his mind and may even suo moto inquire to find the truth behind the complaint.	

Section - 16

Duty of Educational Institution

S. No	Citation	Notes
1.	DR. HARISH SHETTY v. REGIONAL DIRECTOR 2017 SCC OnLine Bom 742 – BOMBAY HC HELD – Court directed educational institutions to carry out the task of detecting specific learning disabilities in children at the very earliest stage, preferably, when they are in the primary schools or after they complete the age of nine years. Apart from conducting medical tests of these students to find out whether they have learning disabilities or not, one other method which can be deployed by the school authorities is to examine these students who had fair performance earlier in the studies and who have not done well in the studies in the recent years.	
2.	MANIF ALAM v. IIT DELHI 2018 SCC OnLine Del 7255 – DELHI HC HELD – A physically disabled student of IIT Delhi was expelled for not securing minimum marks in First semester. Court while reinstating his admission directed IIT Delhi to provide him extra coaching so that he can cope up with the advanced studies. Court held that it is duty of the educational institution to provide such assistance to the person with disability and in such a situation such person can not be expelled even if rules of the university provide for the same. Court further held that automatic expulsion of such student because he failed to secure minimum grade in a semester is arbitrary, therefore institute is duty bound to give him opportunity to explain why he failed to meet the prescribed criterion.	Paras- 16, 17, 18, 19. 20 and 21
3.	DISABLED RIGHTS GROUP v. UNION OF INDIA (2018) 2 SCC 397 – SUPREME COURT	

	HELD – Committee to be constituted to undertake detailed study to make provisions for accessibility as well as pedagogy and suggest modalities for implementing those suggestions, their funding and monitoring. Full compliance of statutory provisions with respect to 5 percent reservation, right to free education to persons with benchmark disability.	
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Section – 20

Non Discrimination in Employment

S. No	Citation	Notes
1.	ANIL KUMAR S v. KERALA STATE ROAD TRANSPORT CORPORATION 2020 SCC OnLine Ker 3585 – KERELA HC HELD – Court reiterated law laid down in Section 20 and ordered Respondent to change the service to the Complainant in accordance with Section 20 of the 2016 Act.	
2.	SAJIMON KB v. KERALA STATE ROAD TRANSPORT CORPORATION 2019 SCC OnLine Ker 7139; (2020) 1 KLJ 513 – KERELA HC HELD – When employee is eligible for lower category change, it does not stipulate anything to the lower scale of pay hence such employee would be eligible for protection of pay before the category change.	
3.	SANGAT RAM v. STATE OF HIMACHAL PRADESH 2019 SCC OnLine HP 3139 – HIMACHAL PRADESH HC HELD – In this case Petitioner, requested court to dismiss transfer orders claiming that as per Section 20(5) he was entitled to get himself transferred close to his home because he was patient of paralysis. Court refused to interfere on the ground that the appropriate government has not framed any policy under Section 20(5) hence court does not assume powers to frame such policies on behalf of executive.	

Section – 32

Reservation in Higher Educational Institution

S. No	Citation	Notes
1.	PURSWANI ASHUTOSH v. U.O.I. (2019) 14 SCC 422 – SUPREME COURT HELD – Not necessary to adjudicate if Section 32 is applicable to Medical Institution or not. MCT Regulations provide for	

	reservation in education institution and are binding on MCI hence medical colleges which are covered by MCI shall be bound by the regulations with respect to reservation. Section 32 provides reservation in higher educational institutions as well as technical institutions imparting technical education.	
2.	<p>ARYAN RAJ v. CHANDIGARH ADMINISTRATION CIVIL APPEAL – 2718/2020 – Decided on – 08.07.2020 – SUPREME COURT</p> <p>HELD – People suffering from disabilities are also socially backward and are thus entitled to the same benefits as given to the Scheduled Castes/ Scheduled Tribes candidates. However, person belonging to PwD category can not be provided relaxation in minimum qualifying marks or cannot be exempted from passing qualifying examination.</p>	
3.	<p>ANMOL BHANDARI v. DELHI TECHNOLOGICAL UNIVERSITY W.P. (C) – 4853/2012 – Decided on – 12.09.2012 – DELHI HC</p> <p>HELD – In this case relaxation of 5 percent was given to PwDs and that of 10 percent was given to people belonging to SC and ST community. Court thus held that the provision giving only 5% concession in marks to PWD candidates as opposed to 10% relaxation provided to SC/ST candidates is discriminatory and PWD candidates are also entitled to same treatment.</p>	

Section – 33/34

(Section – 32/33 of 1995 Act)

Identification Of Posts for Providing Reservation/Reservation

<u>S. No</u>	<u>Citation</u>	<u>Notes</u>
1.	<p>U.O.I. v. NATIONAL FEDERATION OF THE BLIND (2013) 10 SCC 772 – SUPREME COURT</p> <p>HELD – Computation of reservation is based upon total number of vacancies in cadre strength and not on basis of vacancies available in identified posts. Such computation should be identical for Group A, B, C and D posts. Section 32 of 1995 Act (similar to Section 33 of 2016 Act) is not pre condition to Section 33 (similar to Section 34 of 2016 Act). 50 percent ceiling rule not applicable. Act provides for ‘Vacancy based reservation’ and does not provide for ‘Post based reservation’.</p>	
2.	<p>RAJEEV KUMAR GUPTA v. U.O.I. (2016) 13 SCC 153 – SUPREME COURT</p> <p>HELD – Reservation under the Act has to be provided irrespective of the mode of recruitment. Prohibition on reservation in promotion as per Indira</p>	

	Sawhney judgment is not applicable with respect to Persons with Disabilities.	
3.	SIDDARAJU v. STATE OF KARNATAKA Civil Appeal – 1567/2017 – SUPREME COURT HELD – Indira Sawhney judgment dealt with different problem hence law laid down in Rajeev Kumar Gupta v. U.O.I. is valid law on this point.	
4.	UMESH KUMAR TRIPATHI v. ST. OF UTTARAKHAND 2018 SCC OnLine Utt 865 – UTTARAKHAND HC HELD – Complainant applied against the vacancy of ‘Group A’ post claiming Reservation rights for PwDs. His candidature was rejected on three grounds – a) Service Rules do not provide for Reservation in Promotion to persons with disability, b) Post of Regional Manager is not identified for appointment of PwD, c) as per government order promotion is not available to PwD against Group A post. Court citing judgments of Hon’ble Supreme Court in U.O.I. v. NATIONAL FEDERATION OF THE BLINDS and RAJEEV KUMAR GUPTA v. U.O.I. held that though these two judgments were rendered under 1996 Act, are valid and hold good under provisions of new law, i.e. 2016 law. Therefore, respondent was duty bound to provide reservation to PwDs in vacancies of ‘Group A’ posts.	Para – 13 and 14
5.	NAGALAND PUBLIC SERVICE COMMISSION v. TOVIHOLI SWU 2019 SCC OnLine Gau 5365 – GUWAHATI HIGH COURT HELD – It is obligation of the government to identify post for reservation and then provide for reservation under Sections 32 and 33 of Act of 2016. Ones the Act of 1995 stood repealed, notification issued in pursuance thereof also automatically stood repealed.	Para – 19 and 23
6.	PARTHA CHAKRABORTY v. STATE OF WEST BENGAL 2019 SCC OnLine Cal 4117 – WEST BENGAL HIGH COURT HELD - Section 34 of the Act of 2016 would apply to the total number of vacancies which would be evident from the language of the Section itself. The Section, in fact, mentions the phrase “..... the total number of vacancies in the cadre strength in each group of posts meant to be filled.....”.	
7.	MANISH SHARMA v. LT. GOVERNOR 2019 SCC OnLine Del 9852 – DELHI HIGH COURT HELD – No automatic relaxation in qualifying marks can be granted to the PwD candidate. Reservation and qualifying marks are two distinct concepts. In this case a PwD candidate belonging to General category, was appointed. He secured 49 percent marks against the minimum requirement of 50 percent. Advertisement also mentioned that minimum qualifying marks for reserved categories were 45 percent. Court after interpreting the relevant service rules held that relaxation for reserved category can not be extended to PwD category. However, court did not revoke the appointment of	

	PwD candidate and created supernumerary vacancy for the petitioner who approached the court against the appointment of PwD candidate.	
8.	<p>GOVERNMENT OF INDIA v. RAVI PRAKASH GUPTA (2010) 7 SCC 626 – SC</p> <p>HELD – Issues in the case was whether reservation to PwDs under s.33 of 1996 Act can be denied till executive identifies posts for reservation under Section 32 of 1996 Act. Court held that waiting for the executive to identify posts in order to extend reservation to PwDs shall be violation of the intent of the legislature</p>	

Grant of Pension To Disabled Dependant Who Has Attained The Age of 25 Years

Rule 54 of CCS (Pension) Rules, 1972

<u>S. No</u>	<u>Citation</u>	<u>Notes</u>
1.	<p>SRI SHAMSON ROBINSON KHANDAGLE v. UNION OF INDIA 2013 SCC OnLine CAT 436 - CAT, BOMBAY BENCH</p> <p>HELD - Tribunal held that Disability Certificate alone is not requisite certificate to make the applicant eligible for Family Pension. Separate certificate certifying that applicant would be unable to earn his livelihood is indispensable. Applicant in this case produced certificate of 60% disability and pleaded that certification of 60% disability alone proves his inability to earn livelihood. Tribunal rejected this contention.</p>	
2.	<p>NARESH BANSILAL SONI v. UNION OF INDIA 2016 SCC OnLine Guj 654 – Gujrat High Court</p> <p>HELD - In this case Appointing Authority denied the benefit of Family Pension on the ground that the applicant was present in person before the Appointing Authority and he looked physically abled to earn his livelihood. Court held that decision of Appointing Authority that beneficiary can earn his livelihood, is arbitrary. Court held that in order to preclude Appointing Authority from taking arbitrary decisions, Rule lays down that such satisfaction has to be evidenced by the Certificate of Medical Board. Hence, subjective decision of authority is illegal and arbitrary.</p>	
3.	<p>NARSI SAMBUNATH SUVAL v. G.M. WESTERN RAILWAYS 2015 SCC OnLine CAT 1584 - CAT Ahmedabad bench</p> <p>HELD - CAT decided that such certificate would be valid ONLY if it is issued by the prescribing authority, which is medical board. In this case, applicant produced 2 medical certificates, first one issued by Medical Board of Medical and Health Department of State of Rajasthan, another one issued by</p>	

	Private Hospital. Tribunal refused to rely on either one as none was issued by the prescribed authority under the Rules.	
4.	<p>UNION OF INDIA v. BABA SINGH 2012 SCC OnLine MP 10479 – HIGH COURT of Madhya Pradesh HELD - Certificate declaring applicant as able of earning livelihood was set aside. able to earn livelihood was given progressive meaning. As far as capacity to earn livelihood is concerned, does it mean he should adopt means of begging in streets? The family pension being a welfare scheme has to be construed liberally and not in pedantic manner. The welfare State is required to adopt an approach which advances the welfare of the people and not otherwise, which is ex facie retrograde</p>	
5.	<p>KRISHNAN v. UNION OF INDIA 2009 SCC OnLine CAT 737 – CAT Ernakulam Bench HELD - Certificate declaring applicant as able of earning livelihood was set aside Complainant in this case was 75% disabled and was 50 years old. Despite of these facts he was given certificate that he was able to earn his livelihood. Tribunal set aside the ability certificate and held that considering his age and percentage of disability he will not be able to earn livelihood and Family Pension can be allowed in his favour.</p>	
6.	<p>NATWARLAL BHALABHAI v. DIVISIONAL MANAGER, WESTERN RAILWAYS 2006 SCC OnLine Guj 270 – GUJRAT HIGH COURT HELD - 'Ability to earn' interpreted in progressive way. certificate declaring applicant as able of earning livelihood was set aside. family pension granted considering age and complete blindness. Court noted that though the petitioner may be in a position to earn his livelihood by doing job in Railways, the fact remains that he is unable to earn because of his blindness and because of his age. Under the circumstances, it was decided that the respondents have wrongly denied the pension to the petitioner and that the petitioner is entitled for the family pension from the date of the death of his father.</p>	
7.	<p>PRAVEEN SAXENA v. M.D. LIFE INSURANCE CORPORATION 2012 SCC OnLine MP 1022 – MADHYA PRADESH HIGH COURT HELD - Unreasoned order of denial was set aside, parameters to decide ability to earn were laid down Respondent organisation contended that the Complainant/Applicant completed his education up to M.Com. but the height of the petitioner was less than 3 feet. He was handicapped by his both the legs. He was living in the immovable property which was left by his late father. It was further stated that the petitioner was a mentally fit with robust physic and good health and was able to earn his livelihood. However, Court noted that certificate of the Medical Board was not taken into</p>	

	<p>consideration while denying the Family Pension to the Complainant/Applicant. Hence Court held that Order of denial was not speaking Order. Most importantly Court laid down certain parameters for considering ability to earn livelihood, namely full facts to the effect how the petitioner is handicapped, academic qualification, family status, the property (movable and immovable) received by the petitioner from his parents.</p>	
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