

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.A. No. 350/196/2018

Date : 27.02.2018

Coram : Hon'ble Ms. Manjula Das, Judicial Member
Hon'ble Dr.(Ms.) Nandita Chatterjee, Administrative Member

ATRI KAR

VS.

UNION OF INDIA & ORS.
(U.P.S.C.)For the applicant : Ms. A. Chakraborty, counsel
For the respondents : None

For the applicant : Ms. A. Chakraborty, counsel

For the respondents : None

ORDER(ORAL)Per Mrs. Manjula Das, Judicial Member

The applicant belongs to transgender category who wants to appear in the Civil Services Examination which is conducted by the UPSC. Being aggrieved for not giving "Other Category" and giving option only for "Male" and "Female" in the Gender column in the advertisement dated 07.02.2018 for Civil Services Examination, 2018 issued by the UPSC, the applicant approached before this Tribunal under Section 19 of Administrative Tribunal Act, 1985 with the following reliefs:-

(i) Direction upon the respondents and their men and agent to modify and/or rectify the Notification being Advertisement No. "Examination Notice No.04/2018-CSP", published on 07.02.2018 and the online Application form and incorporates and/or includes the option of "Other" in the Gender category and to allow the petitioner candidate to fill up the Application Form in accordance with law;

(ii) Direction upon the respondents and their men and agent to allow the petitioner to fill up offline form, if the respondents and their men and

agent cannot modify/rectify the said Online Application within the prescribed time viz. 06.03.2018;

(iii) Direction upon the respondents and their men and agent to treat the petitioner as a socially and/or economically backward class candidate and treat the petitioner as a reserved candidate and therefore waive off the requisite fees required for Registration;

(iv) Direction upon the respondents and their men and agent to not act on the impugned notice dated 07.02.2018 till the petitioner is allowed to fill up the form as per their self identified gender;

(v) Direction upon the respondents and their men and agent to pass any order as to costs, and;

(vi) To pass any such other order or order as the Hon'ble Tribunal may deem fit and proper."

2. Ms. A. Chakraborty, Id. counsel appearing on behalf of the applicant submits that the respondent authorities i.e. the UPSC while issuing the examination notice dated 07.02.2018 for Civil Services' Examination, 2018 did not incorporate the "other" gender category else than "Male" and "Female". It was submitted that at the time of filling up of the online form for Civil Services Examination in regard to the advertisement dated 07.02.2018, the applicant discovered that there are only two options in the Gender column and those are "Male" and "Female" and he found no option for "Other Category" in the Gender Column.

3. Being unable to fill up the said online application form the applicant made a representation to the concerned respondent authorities but the same has not yet been responded to. According to the Id. counsel for the applicant, the purported acts and action or inaction on the part of the respondent authorities are without application of proper mind and is in violation of fundamental rights of an individual as laid down by Constitution. As such, the action of the respondent authorities is bad in law.



Issue notice to the respondents by making it returnable within 4 weeks.

Reply be filed within 4 weeks and rejoinder, if any, within 2 weeks thereafter.

4. Ld. counsel for the applicant humbly prays for an interim order for a direction to the respondents to allow the applicant to fill up the application form 'Offline'. It was further stated in the bar that the last date of submission of form is 06.03.2018 and the date of examination is 03.06.2018 respectively and if no interim protection is given to the applicant to at least to allow her to apply offline, the applicant will be seriously prejudiced. To establish her case the ld. counsel for the applicant relied on the decision of the Hon'ble Apex Court in **Writ Petition(Civil)No.400 of 2012(National Legal Services Authority vs. Union of India & Ors.)**.

6. We have heard the ld. counsel on the interim prayer, perused the pleadings and materials placed before us and the decisions relied upon. The Hon'ble Apex Court in the case of **National Legal Services Authority vs. Union of India & Ors.(supra)** discussed each and every aspect in regard to discrimination towards transgender category and one's gender-identity and recognition, inter alia, describing the Rights to the universal enjoyment of human rights, Rights to equality and non-discrimination, Right to privacy, Right to freedom of opinion and expression, Right to education and public employment, Right to recognition before the law, Rights to life etc. The Hon'ble Apex Court, in its judgment discussed some Foreign judgments as well as the decisions of Hon'ble Supreme Court of India.



In the case of **National Human Rights Commission vs. State of Arunachal Pradesh** reported in AIR 1996 SC 1234 the Hon'ble Supreme Court observed as hereunder:-

"We are a country governed by the rule of law. Our constitution confers certain rights on every human being and certain other rights on citizens. Every person is entitled to equality before the law and equal protection of laws."

6. After discussing the various concepts as well as the decision rendered by the Hon'ble Apex Court, it was finally declared that :-

"(ii) To transgender persons right to decide their self identified gender is also availed and the central and state Governments are directed to grant legal recognition of their gender identity such as "Male"and "Female" and "Third Gender";

(iii) We direct the Central and the State Governments to treat them as social, educational backward classes or citizens and extend all kinds of reservation in case of admission in educational institutions and for public appointment;"

7. In the present case we have noted that as the application form does not have the other column else than "Male"and "Female"the applicant is deprived from appearing in the Civil Services Examination to be held on 03.06.2018 where the last date of filling up of the application form is 06.03.2018.

8. In our opinion, once the main issue regarding rights of the Transgender has already attained finality in view of the Hon'ble Apex Court's decision, we are not having to express our divergent view.

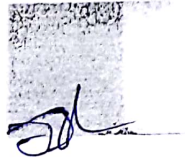


9. In the above circumstances, we find that it is a prima facie fit case for passing an interim order as otherwise the applicant may suffer irreparable loss and injury. The balance of convenience is in favour of the applicant.

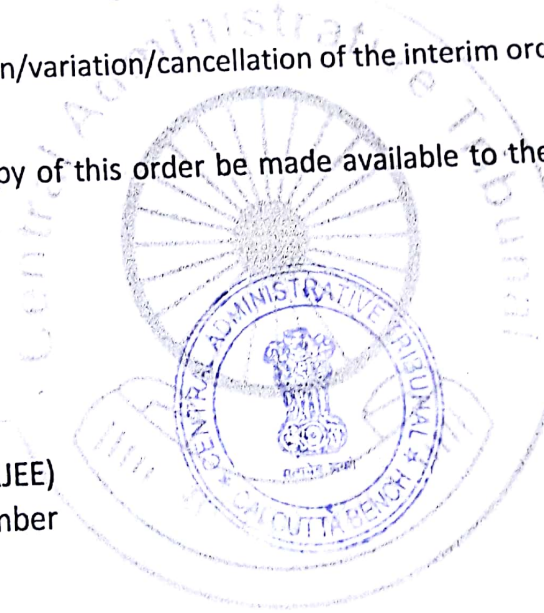
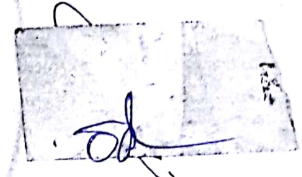
In the interim measure, we direct the respondent authorities, more particularly the Respondent No.2 to allow the applicant to fill up the Application Form offline for appearing in the Civil Services Examination, 2018 in pursuance of the Examination Notice No.04/2018-CSP dated 07.02.2018 issued by the UPSC. List on 14.05.2018.

Liberty is however granted to the respondents to file M.A. for vacation/modification/variation/cancellation of the interim order.

10. A certified copy of this order be made available to the Id. counsel for the applicant.



(NANDITA CHATTERJEE)
Administrative Member
sb

(MANJULA DAS)
Judicial Member

(a) Sl. No. of the appln. 835
(b) Name of the applicant A. Chatterjee Adv.
(c) Dt. of presentation or application for copy 28/2/18
(d) No. of pages 5
(e) Copying fee Charges/urgent or ordinary Free
(f) Dt. of preparation of copy 28/2/18
(g) Dt. of delivery of the copy to the applicant 28/2/18

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Sealed
Court Officer 28/2/18
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Central Administrative Tribunal
कलकत्ता न्यायपीठ
Calcutta Bench