

**CENTRAL ADMINISTRATIVE TRIBUNAL
MADRAS BENCH**

Thursday the 7th day of October Two Thousand Twenty One

PRESENT

Hon'ble Mr.Swarup Kumar Mishra : Judicial Member

AND

Hon'ble Shri T.Jacob : Administrative Member

ORIGINAL APPLICATION NO.310/00510/2021

**S.S.Sakthivel
S/o. S.K.Sellamuthu
Selambagoundenpalayam
Thottipalayam post,
Bhavani Taluk,
Erode District.**

- Applicant

-Vs -

1.Union of India Rep. By

**The Secretray,
Department of Personnel & Training,
Ministry of Personnel, Public Grievances & Pensions,
North Block, New Delhi-110 001.**

2.The Chairman,

**Union Public Service Commission,
UPSC Bhavan, Dholpur House,
Shahjahan Road,
Main Singh Road Area, New Delhi-110069.**

3.The Joint Secretary,

**Union Public Service Commission,
UPSC Bhavan, Dholpur House,
Shahjahan Road,
Main Singh Road Area,
New Delhi-110 069.**

- Respondents

**M/s. M.N.Sumathy
Mr.K.Kannan
Mr.M.Devendran**

**- Counsel for the Applicant
- Counsel for the Respondent No.1
- Counsel for the Respondent N0.2 & 3**

ORDER

The Hon'ble Bench has issued the following interim order:-

Heard Learned Counsel for the parties.

2. *According to the applicant*, who is a physically challenged OBC candidate has appeared in CSE (Civil Service Examination) 9 times and cleared the preliminary exam, but failed in main examination. Pursuant to the UPSC Notification dt.4.3.2021, he applied for the CSE-2021 examination, but as he has crossed the upper age limit of 45 years and has made 9 attempts, he was not allowed to apply for the said examination. Whereas SC/ST Physically Challenged candidates have been given upper age limit up to 47 years and unlimited number of attempts. Hence, he has filed this OA seeking to set aside the notification bearing No. 04/2021/CSP dated 04.03.2021 issued by the 3rd respondent in so far as it denies relaxation as to the upper age limit and number of attempts to Persons with Benchmark Disabilities on par with relaxations granted to SC/ST category as arbitrary, illegal and unconstitutional and to direct the respondents to grant the same benefits of relaxation to the persons with Benchmark Disabilities of OBC category candidates as was given to the person with benchmark Disabilities of SC/ST candidates as per the law laid down by the three judge Bench of Supreme Court in Aryan Raj Vs. Chandigarh Administration & Ors by order dated 08.07.2020 in C.A. No. 2718/2020.
3. The applicant is also seeking for an interim direction to permit the applicant to appear in the ensuing Civil Services Preliminary Examination scheduled on 10.10.2021 by extending age relaxation and number of attempts benefit as

is given to SC/ST Physically Challenged candidates.

4. The learned counsel for the applicant also relies on para-10 of the judgment of Hon'ble High Court of Delhi in Anamol Bhandari (minor) vs. Delhi Technological University and order of the Supreme Court in the case of Secretary, Ministry of Defence vs. Babita Puniya and Ors in Civil Appeals No. 9367-69 of 2011 with Nos. 1127-28 of 2013 and 1210 of 2020 decided on 17th February, 2020 reported (2020) 7 SCC 469.

5. Learned counsel for the UPSC and learned counsel for the DOP&T vehemently oppose to the grant of Interim Relief on the ground that the applicant has crossed the prescribed age limits.

6. Learned counsel for the UPSC submits that UPSC conducts the Civil Service examination as per the rules framed by the Central Government. The rules for the Civil Services examination, 2021 have been notified by the Department of Personnel and Training (DOPT) in the Gazette of India Extraordinary dated 4th March, 2021. Based on these rules of examination, the Commission's Notice inviting online applications for Civil Services (Preliminary) Examination, 2021 was published on the Commission's website on the same date.

7. In Rule 3 of the aforesaid Rules, it has been provided that every candidate appearing at the examination who is otherwise eligible, shall be permitted six(6) attempts at the CSE. However, relaxation in the number of attempts will be available to the SC/ST/OBC and PwBD category candidates who are otherwise eligible. The number of attempts available to such candidates as per relaxation is as under:-

	Category to which the candidate belongs		
	SC/ST	OBC	PwBD
Number of Attempts	Unlimited	09	09 for GL/EWS/OBC Unlimited for SC/ST

Note: The terms- GL for General, EWS for Economically Weaker Sections, SC for Scheduled Castes, ST for Scheduled Tribes, OBC for Other Backward Classes and PwBd for Persons with Benchmark Disability- are used for denoting the categories of candidates taking an attempt at the examination.

8. In Rule 5 of the said Examination Rules, provisions have been made for the admissible age limit for admission to the examinations for various categories of candidates including OBC, SC/ST and PwBD. As per these provisions, the upper age limit for admission to the examination is 32 years. However, the same is relaxable for certain categories of candidates including the candidates belonging to the SC, the OBC and the PwBD and the quantum of relaxation is five years, three years and 10 years respectively for these three categories. For an OBC PwBD candidate, the rules of the examination provide for cumulative age relaxation of 13 years.

9. Learned counsel for the DOPT submits that the rules for the Examination have been framed and notified by the Government and the question of granting relaxation/concession to any category of candidates in the Rules is a matter of policy and hence interim relief cannot be granted.

10. As such the ad interim relief as sought for by the applicant at this stage cannot be granted and the points raised by the applicant has to be gone into at the time of final disposal of the case. This Tribunal is not *prima facie* satisfied at this stage that the applicant is to be permitted to appear in the examination in question. Besides that the rule framed in this regards for conducting examination in question has not been challenged by the applicant.

11. The case stands admitted vide order dated 16.09.2021. This order pertains to the interim relief.

12. *The question of grant of interim order has been considered.*

In Transmission Corp. of A.P. Ltd. v. Lanco Kondapalli Power (P) Ltd., (2006) 1 SCC 540, the Apex Court has held as under:-

48. The interim direction ordinarily would precede finding of a prima facie case. When existence of a prima facie case is established, the court shall consider the other relevant factors, namely, balance of convenience and irreparable injuries.

Again, in Maria Margarida Sequeira Fernandes v. Erasmo Jack de Sequeira, (2012) 5 SCC 370 the Apex Court has held as under:-

86. Ordinarily, three main principles govern the grant or refusal of injunction:

- (a) prima facie case;
- (b) balance of convenience; and
- (c) irreparable injury; which guide the court in this regard.

In the broad category of prima facie case, it is imperative for the court to carefully analyse the pleadings and the documents on record and only on that basis the court must be governed by the prima facie case. In grant and refusal of injunction, pleadings and documents play a vital role

13. Thus, the case has to be examined on the touch stone of the above dictum.

The term prima facie, as per Black's Law Dictionary means - Sufficient to establish a fact or raise a presumption unless disproved or rebutted;

In Bangalore Woollen Cotton and Silk Mills Co. Ltd. v. B. Dasappa, AIR 1960 SC 1352, the Apex Court has held as under:-

"A prima facie case does not mean a case proved to the hilt but a case which can be said to be established if the evidence which is led in support of the same were believed. While determining whether a prima facie case had been made out the relevant consideration is whether on the evidence led it was possible to arrive at the conclusion in question and not whether

that was the only conclusion which could be arrived at on that evidence."

14. In the instant case, admittedly, the applicant does not fulfil the requisite condition for becoming eligible for appearing for the examination. Thus, he is not establishing his existing right but trying to create a new right. And in so creating a new right, he compares the case of physically challenged SC/ST candidates to that of OBC.

15. Whether an OBC candidate could be treated at par with an SC/ST candidate came up for consideration in the case of ***Chattar Singh v. State of Rajasthan, (1996) 11 SCC 742***, wherein, a three judges Bench of the Apex Court has held as under:-

17. The next question is whether the OBCs are to be treated alike Scheduled Castes and Scheduled Tribes and given the 5% cut-off marks in the Preliminary Examination under proviso to Rule 13 and whether omission thereof prohibits the right to equality envisaged in Article 14? Article 14 provides right to equality of opportunity and equal protection of law. Articles 15 and 16 are species of Article 14. Article 16(1) prohibits discrimination and gives equality of opportunity to every citizen in matters relating to employment or appointment to any office under the State. Article 16(4) elongates the equality of opportunity to unequal by affirmative action by enjoining upon the State to make provision for reservation of appointments for posts in favour of "any backward class of citizens" which in the opinion of the State is not adequately represented in the service under the State. It is now a well settled legal position that Article 16(4) is not an exception but a facet of Articles 14 and 16(1). It gives power to the State to effectuate the opportunity of equality to any backward class of citizens. Article 366(24) defines "Scheduled Castes" and Article 366(25) defines "Scheduled Tribes". Article 341 empowers the President in consultation with the Governor of the State to specify by public notification that the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that State or Union Territory, as the case may be. Similarly, Article 342(1) gives power to the President to specify the tribes or tribal communities which shall, for the purpose of Constitution, be deemed to be Scheduled Castes in relation to the State or Union Territories, as the case may be. That will be subject to the law made by Parliament under clause (2) of Articles 341 and 342(2) thereof. The expression "Backward Classes" has not been defined under the Constitution but the

President has been empowered to appoint a Commission to investigate into the conditions of Backward Classes for recommendation with regard to steps to be taken by the Union or the State Governments to remove difficulties and to improve their conditions. Commissions like Kaka Kelkar Commission and Mandal Commission were appointed by the President who identified the backward classes. On identification of social and educational backwardness and acceptance thereof by the appropriate Government, the President or the Governor of the State Government would issue public notification extending the benefits to improve their conditions. Until such a notification is published, Backward Classes are not entitled to the benefit of reservation under Article 15(4) or 16(4) of the Constitution. Articles 14 and 16 read with the Preamble gives equality of opportunity in matters relating to employment or appointment to any office under the State. By hierarchical unequal social status and denial of opportunities and facilities due to untouchability, a practice against Scheduled Castes and Scheduled Tribes living in the forest area require protective measures to remove handicaps and disadvantages suffered by the members belonging to the Scheduled Castes and Scheduled Tribes so as to enable them to compete for selection. The appearance of injustice is denial of justice. In *Madhu Kishwar v. State of Bihar*¹ (SCC pp. 152-53, para 38), it was laid down that law is the manifestation of principles ⁷⁵⁰ of justice. Rule of law should establish a uniform pattern for harmonious existence in a society where every individual should exercise his rights to his best advantage to achieve excellence, subject to the protective discrimination. The best advantage of one person could be the worst disadvantage to another. Law steps in to iron out such creases and ensures equality of protection to individuals as well as group liberties. Man's status is a creature of substantive as well as procedural law to which legal incidents would attach. Justice, equality and fraternity are trinity for social and economic equality. Therefore, law is the foundation on which the potential of the society stands. If the law is to adapt itself to the needs of the changing society, it must be flexible and adaptable. The constitutional objective of socio-economic democracy cannot be realised unless all sections of the society participate in the State power equally irrespective of their caste, community, race, religion and sex. All discriminations in sharing the State power made on these grounds and those discriminations are to be removed by positive measures. The concept of equality, therefore, requires that law should be adaptable to meet equality. Article 38 mandates to minimise inequality in income and to eliminate the inequality in status, facilities and opportunities not only among the individual but also among the groups of people to secure to them adequate means to improve excellence in all walks of life. Article 46 directs the State to promote with special care the educational and economic interests of the weaker sections of the people, and, in particular,

of Scheduled Castes and Scheduled Tribes, and to protect them from social injustice and all forms of exploitation. Equal protection clause, therefore, requires affirmative action for those placed unequally. Equality for unequals is secured by treating them unequally. Affirmative action or positive discrimination, therefore, is inbuilt in equality of opportunity in status enshrined in Articles 14 and 16(1) of the Constitution. Therefore, Scheduled Castes and Scheduled Tribes stand as two separate classes while OBCs stand apart. (Emphasis supplied).

If such an equation or parity could be or should be maintained, then application of creamy layer should have been made in respect of both OBC and SC/ST. However, the same is not so. In this regard, support can be had from the constitutional bench judgment in the case of *Jarnail Singh v. Lachhmi Narain Gupta, (2018) 10 SCC 396*, wherein, the Apex Court has held :-

"It is only when it comes to the application of the reservation principle under Articles 14 and 16 that the creamy layer within that sub-group is not given the benefit of such reservation."

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It could be seen that the principle of creamy layer to exclude from the domain of reserved category is applicable only for OBC and not for SC/ST candidates.

16. Thus, no *prima facie* case has been made out by the applicant to justify grant of interim relief. Hence, prayer for the grant of interim relief is declined.

17. In view of the submissions made by the learned counsel for the respondents, we are not inclined to grant interim relief sought by the applicant. Further, the applicant has not challenged the Civil Service Examination Rules issued by the Department of Personal and Training vide notification dated

04.03.2021. The citations referred to by the learned counsel for the applicant are not applicable to the facts of the present case.

18. Respondents are directed to file their respective replies within four weeks. Call on 09.11.2021.

Copy of the order be issued to both side by today.

✓
/TRUE COPY/

DEPUTY REGISTRAR

To

1.M/s.M.N.Sumathy
Counsel for the applicant

2.Mr.K.Kannan
Counsel for the respondents No.1

3.Mr.M.Devendran
Counsel for the respondents No.2 & 3