



CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH

O.A 350/196/2018

Date of Order: 11.07.2018.

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

Atri Kar, son of Sri Parimal Kar, and presently self identified as transgender, aged about 28 years, residing at 2/A, Shibpur Main Road, Bansberia, Mogra, Hooghly - 712503, West Bengal.

---Applicant.

-Versus-

1. The Union of India, service through the Secretary, Ministry of Human Resources and Development, having its office at 302-C, Shastri Bhawan, New Delhi - 110001.
2. The Union Public Service Commission, represented by its Chairman, having its office at Dholpur House, Shahjahan Road, New Delhi - 110069.
3. The Secretary, Union Public Service Commission, having its office at Dholpur House, Shahajahan Road, New Delhi - 110069.

---Respondents.

For The Applicant(s): Ms. A. Chakraborty, Counsel

For The Respondent(s): Mr. A. K Chattopadhyay, Counsel

ORDER (ORAL)

Per: Ms. Bidisha Banerjee, Judicial Member:

This application was filed in order to seek the following relief:

- " (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. Hon'ble Apex Court in **Writ Petition (Civil) No. 400 of 2012 (National Legal Services Authority vs. Union of India & Ors.)** 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 the case considered some Foreign judgments as well as its earlier decisions and finally declared that :-

" (ii) To transgender persons right to decide their 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 Government 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."

3. In the present case, the applicant, a transgender, was deprived from appearing in the Civil Services Examination, scheduled to be held on 03.06.2018, where the last date of filling up of the application form was 06.03.2018, since the application form did not have any column other than "Male" and "Female".

4. Since, the main issue regarding rights of the Transgender has already attained finality in view of the Hon'ble Apex Court's decision, this Tribunal, on 27.02.2018, directed 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.

5. Today at hearing, Id counsel for both the parties were present and submitted in unison that the applicant has been allowed to appear in the examination pursuant to such directions, and therefore, this O.A be disposed of as infructuous.

6. In our considered opinion, since the applicant has been allowed to sit for the examination (Civil Services Examination conducted by UPSC), as per directions of this Tribunal, the reliefs prayed for seeking modification or rectification of notification has become infructuous.

7. Accordingly we dispose of the O.A with a direction upon the respondents to process her case in accordance with law and not to pose any further hindrance or impediment in her consideration on the basis of her gender identity. No costs.

8. However before we part, we would hasten to add that we are concerned ^{about} ~~with~~ the fate of such candidates alike the present one. Hence, we request the DOPT to oversee that in matters of public employment, the judgement of Honble Apex Court (supra) is duly implemented, so that candidates alike the present applicants are not compelled to knock the doors of Tribunals & Courts for justice, every time a recruitment/ notification is issued.

9. A copy of this order be sent to the DOPT.

(Nandita Chatterjee)
Member (A)

(Bidisha Banerjee)
Member (J)