

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

D.A. No: 39 of 1990

J.A. No:

DATE OF DECISION:

18/7/94

Ghanshyam Singh

PETITIONER.

Sir Virendra Kumar

ADVOCATE FOR THE
PETITIONER

VS
VERSUS

Union of India and Others

RESPONDENTS.

Sir A.V. Srivastava

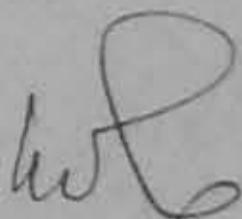
ADVOCATE FOR THE
RESPONDENTS.

COURT

The Hon'ble Mr. S. Das Gupta Member A

The Hon'ble Mr. T.C. Verma Member S.

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgement?
4. Whether to be circulated to all other Bench?



SIGNATURE!
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JAYANTI/

(9)

Reserved:

(5)

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration O.A. No. 39 of 1990

Ghanshyam Singh Applicant.

Versus

Union of India
and others Respondents.

Hon. Mr. S. Das Gupta, Member(A)
Hon. Mr. T.L. Verma, Member (J)

(By Hon. Mr. S. Das Gupta, Member(A))

In this O.A. filed under Section 19 of the Administrative Tribunals Act, 1985 the applicant has challenged the order passed by the D.R.M. communicated to the applicant by the letter dated 13.12.1989 (Annexure-A 1) by which the applicant's representation for being considered for medical examination of lower category C-I Group has been rejected.

2. The brief facts of the case are that the applicant was appointed as Casual Khalasi at Mathras Station, Aligarh on 18.1.1980 and worked as such, till 29.12.1984. Thereafter, he worked under Divisional Engineer, Allahabad till 29.3.1985.

They having completed more than 120 days' of service on 31.12.1983, the applicant along with others was screened in 1984 and was placed at Sl. No. 35 of the panel. Thereafter, the applicant was medically examined but was found unfit in B-I Group, whereupon, his services were terminated. The

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applicant represented for being considered for medical examination in C-I category on the ground that similar action was taken in the case of one Ram⁶Pal Singh but this representation was turned down on the ground that the applicant had not completed 6 years of service and the extant orders ^{permits consideration} ~~promoting regularisation~~ for a lower medical category in the case of only such casual labourers who had put in more than 6 years of service. The petitioner, thereafter, filed a O.A. No. 110 of 1988 which was disposed of by this Tribunal by its order dated 22.12.1988 with the direction that the D.R.M. should consider the case of the applicant for being sent for lower medical examination and proceed thereafter in accordance with law. The D.R.M. was advised to examine the circumstances of the applicant and see whether he could also be granted same relaxation as was granted to Ram⁶Pal Singh. A copy of the relevant order is at Annexure A II. In compliance with this direction, the D.R.M. reconsidered the matter but found no justification for sending the applicant for medical examination in lower category. It is this order of the D.R.M. which is under challenge in this application.

3. We have heard the learned counsel for both the parties and carefully gone through the records of the case.

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4. The facts of this case are not in dispute. It is also not in dispute that under the extant rules, the applicant had no right to be sent for medical examination in a lower category as he had not completed 6 years of service. The only right which accrued to the applicant was to be considered for such lower category medical examination in view of the Tribunal's direction which was given in the light of the contention that a person similarly placed was granted relaxation from the operation of the extant rules. It has been averred by the respondents in their counter reply that such relaxation was granted to Ram Gopal Singh after his case was examined on merit and the D.R.L. granted permission as special case exercising his discretionary powers. The applicant has also mentioned few instances in the present application where such relaxation was allegedly granted. The respondents contended that such persons were also permitted after examination of merit of each case and the competent authority having come to the conclusion that there was justification for granting such relaxation.

5. Admittedly, the applicant could not have been sent for lower category medical examination under the extant rules but could have been sent

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only under the discretionary power of DRB on the merit of his case. The impugned letter clearly states that the competent authority found no justification in his case for sending him for lower category medication examination. There is no allegation of any malafide on the part of the authorities in exercising discretion and no allegation that a discretion has been exercised whimsically. In case the discretion was exercised for some persons on merit and the same was withheld in the case of the applicant also on merit, we cannot compel the competent authority to exercise its jurisdiction in favour of the applicant in the absence of any evidence of malefide exercise of such discretionary powers.

6. In view of the above, we find no merit in this case. The application is hereby dismissed. There will be no order as to costs.

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Member (J)

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Member (A)

Dated: 18 July, 1994

(n.u.)