

(15)

OPEN COURT

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

(THIS THE 05th DAY OF NOVEMBER, 2009)

PRESENT:

HON'BLE MR. JUSTICE A.K. YOG, MEMBER-J
HON'BLE MR. S. N. SHUKLA, MEMBER-A

ORIGINAL APPLICATION NO. 698 OF 2002

(U/s, 19 Administrative Tribunal Act.1985)

Awadhesh Kumar, Son of Late Shri Panna Lal
Vishwakarma, Resident of Soyepur Bazar,
Post Office – Cantt, District – Varanasi
Pin – 221002.

..... Applicants

By Advocate: Shri T.P.Mishra

Versus

1. Union of India, through the Secretary,
Ministry of Railway, (Govt. of India)
(Railway Board) E (GR) 1 Section
Rail Bhawan, Rafi Marg,
New Delhi – 110001.
2. Railway Board, through its chairman,
Govt. of India, Ministry of Railways
New Delhi – 110001.
3. Joint Director, Estt. (Gaz. Rectt)
Railway Board, Govt. of India Ministry of Railways
New Delhi. 110001.
4. Medical Director, Northern Railway
(Govt. of India), Central Hospital
New Delhi.
5. Union Public Service Commission
Through its Chairman,
New Delhi – 110001
6. The General Manager, Northern Railway,
New Delhi

..... Respondents

By Advocate: Shri P. Mathur.

(Signature)

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OR D E R(DELIVERED BY: JUSTICE A. K. YOG- MEMBER-JUDICIAL)

Heard learned counsel for the Applicant and the Respondents. Perused the records.

2. The Applicant's grievance is that he has been deprived of opportunity of undertaking medical examination due to lapse on the part of Respondents (viz. - he not given information in time). The applicant contents that letter purported to have been sent by registered post was sent by UPC; hence malice is imputed. There is no other basis for such allegation nor any officer by name has been impleaded to fix personal liability. As far as the question of offering opportunity of medical examination is concerned, we find that the applicant was called for medical examination on 10.07.2001 but failed.

According to the applicant he failed to avail himself of this opportunity because of accident of his brother. Assuming it to be correct, there is no explanation why he did not avail subsequent opportunities offered by the Respondents.

3. Para 7 of the said Counter Affidavit filed by the Respondents reads:-

“Despite repeated defaults by the applicant the respondent once again took a lenient view and gave one more opportunity to appear for medical examination on 01.11.2001. A communication dated 16.10.2001 in this connection is enclosed as per Annexure R-VI. The applicant again failed to avail

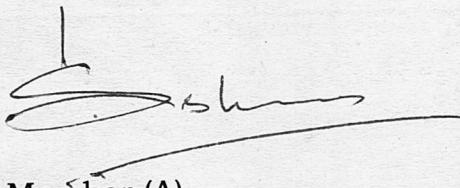
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this opportunity. Thereafter vide letter dated 4.1.2001 he was finally advised that since he has failed to avail opportunities given to him for appearing in medical examination, he will not be allotted any service on the basis of Engineering Services Examination 2000."

4. Aforequoted Para 7 of Counter Affidavit has not been denied or controverted in the Rejoinder Affidavit. Question of sending letter by registered post and/or by UPC has no relevance when Respondents offered opportunity later and this stand of the respondents has not been disputed/denied/or explained by the Applicant. The applicant himself failed to avail the opportunity and same cannot blame that the Respondents have not specifically controverted it.

5. In view of the above we find no merit in the present O.A. It is accordingly dismissed. No Costs.



Member (A)



Member (J)

/Shashi/