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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH,  
NEW DELHI.

DA No. 3125/91 .. Date of decision: 28.08.92  
Sh. Kishan Singh .. Applicant  
Sh. U.S. Bisht .. Counsel for the applicant  
Versus  
U.O.I. .. Respondents  
Sh. M.L. Verma .. Counsel for the respondents

CORAM

Hon'ble Sh. P.K. Kartha, Vice Chairman (J)  
Hon'ble Sh. B.N. Dhoundiyal, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporters or not ? *Yes*

JUDGEMENT

(Of the Bench delivered by Hon'ble Sh. B.N. Dhoundiyal,  
Member (A))

Shri Kishan Singh who was working as Postal Assistant at Gole Dak Khana, New Delhi is aggrieved by the impugned orders dated 3.10.91 and 17.8.91 rejecting his representation and appeal for treating the period between 15.12.89 to 20.8.90 as on duty.

2. The contention of the applicant is that he belongs to Scheduled Tribe Community and was selected  
*by*

as an outside candidate for appointment as Postal Assistant for Reserved Training Pool (RTP) of 1982. He was called upon to submit a health certificate obtained from a competent medical authority, vide letter dated 21.1.83. He underwent medical examination by the Chief Medical Officer (CMO) Gopeshwar, Chamoli, who gave a fitness certificate on 2.2.83. He reported to the Deputy Chief Post Master, New Delhi and submitted the required certificates. However, the authorities insisted on fresh medical examination by Dr. R.M.L. Hospital. Dr. M. Bhatia of the said hospital examined him and found him fit as per letter dated 18.4.83. Thus, the applicant fulfilled the requirements of submitting the medical certificate of fitness on first entry into the Government service. He was sent for Postal Training to Saharanpur on 26.10.83. Submission of Medical certificate of fitness is essential before undergoing the prescribed training under SR.4A. After successful completion of his training, he worked at New Delhi Post Office <sup>by</sup> RTP till 5.10.86, when he was appointed as a temporary Postal Assistant in the pay scale of Rs. 260-480. On 20.5.87, the respondents again directed the applicant to go to RML Hospital for medical examination <sup>by</sup>

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a third time after he had served for more than 4 years. Subsequently, on 25/27.1.88, a notice was served on him, for termination of his services after one month purportely due to the hospital reporting temporary defect in his eye fixation. On 15.12.89, he was asked to undergo the 4th Medical examination at the RML Hospital and was summarily relieved of his duties and his pay and allowances were stopped. He filed an OA.83/90, which was disposed of by this Tribunal vide its judgement dated 20.8.90, upholding his right to attend office. The applicant prays that the impugned order dated 3.10.91, whereby he was asked to apply for leave from 15.12.89 to 20.8.90, be set aside and quashed and the respondents be directed to treat the said period as spent on duty and to make payment of arrears with interest at the rate of 18% to him.

3. The respondents have contended that the applicant stayed away from getting himself medically examined and remained absent during the period above mentioned. The Department took a lenient view and asked him to take leave to cover this period, but he failed to do so. Though the applicant had<sup>lv</sup> furnished the medical certificate of fitness issued by the Chief Medical Officer(CMU) Gopeshwar Chamoli,

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he was again sent for Medical Examination to RML Hospital on 22.3.83 and was declared medically fit and was issued a provisional certificate on 15.4.83. However, the original certificate reported to have been despatched on 14.5.83, was not received from the Hospital. The hospital authorities refused to issue a duplicate copy of the medical certificate and hence the applicant was again sent for medical examination on 20.5.87. At this examination, he was found unfit, because of defective fixation of eye. Thereafter, the notice for termination of services was issued to him. On his appeal, he was asked to be re-examined by the medical board on 29.11.88, but he did not obey the order. He was relieved for appearing before the Board on 15.12.89. He was allowed to resume duties as per direction of the Tribunal on 20.8.90 and was declared medically fit by the medical Board on 3.4.91. He was asked to apply for leave to cover the period of absence from 15.12.89 to 20.8.90. This order has not been complied with, by him.

4. We have gone through the records of the case and heard the learned counsel for both parties. The respondents have admitted the fact that at the time of joining the services the applicant had submitted the fitness certificate issued by the Chief Medical Officer(CMO), Chamoli, which was later

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supported by a provisional certificate issued by Dr. Bhatia of Dr. RML Hospital, New Delhi. The fact that the original copy of the second certificate was lost in transit was not due to any fault of the applicant. The medical examination is required under the rules on entry into service and before undergoing the training and certainly not after an employee has served for 4 years. This is a long time during which period, any employee may develop some ailments or other. It is clear that the first two certificates submitted by the applicant had met the requirement of rules. In OA 83/90, the respondents had stated that the applicant had not been relieved from the job, but was only relieved for the purpose of going to Dr. R.M.L. Hospital, for medical check-up. It was held that the applicant continued to be an employee. The doctrine of 'no work no pay' would not be applicable in cases where the applicant was not allowed to work due to no fault of his. (Vide Union of India Vs. K.V. Janakiraman JT 1990(1) SC 527); Kishan Lal Vs. Union of India- AIR 1988 (1) 109.)

4. We, therefore, hold that the applicant is entitled to succeed and direct the respondents to treat him as on duty during the period from 15.12.89 to 20.8.90. The pay and allowances due to him on that basis shall be given to him along with 12% interest expeditiously and

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preferably within a period of three months from the date of receipt of this order.

There will be no order as to costs.

*B.N. Dhondiyal*  
( B.N. Dhondiyal ) 29/9/52  
Member (A)

*P.K. Kartha*  
28/8/52  
( P.K. Kartha )  
Vice Chairman (J)