

## IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 360/91  
~~XXXXXXXXXX~~

198

DATE OF DECISION 15-7-92

RIYAZ MOHAMAD

Petitioner

Mr. J L Bheet

Advocate for the Petitioner(s)

Versus

Union of India &amp; Ors.

Respondent

Mr. S K Sanyal

Advocate for the Respondent(s)

## CORAM

The Hon'ble Mr.

Justice S K Dhaon, Vice Chairman

Ms. Usha Savara, Member (A)

The Hon'ble Mr.

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 it needs to be circulated to other Benches of the Tribunal ?

S(K)  
V.C.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CIRCUIT SITTING AT NAGPUR  
NAGPUR

O.A. No. 360/91

Riyaz Mohamad S/o Khan Mohamad,  
aged about 54 years;  
R/o. Patthar Phid's akhada  
Near Gandhinagar  
Circle No. 7/12  
Post. Itwari;  
Nagpur

..Applicant

V/s.

1. Divisional Railway Manager  
South Eastern Railway  
Nagpur

2. The Additional Divisional  
Railway Manager;  
South Eastern Railway  
Nagpur

..Respondents

Coram: Hon. Shri Justice S K Dhaon, V.C.  
Hon. Ms. Usha Savara, Member(A)

APPEARANCE:

Mr. J L Bhoot  
Counsel  
for the applicant

Mr. S K Sanyal  
Counsel  
for the respondents

ORAL JUDGMENT:

DATED: 15.7.1992

(PER: S.K. Dhaon, Vice Chairman)

The applicant was awarded a minor punishment by the DCOS by his order dated September 7/ October 8, 1990. The said officer came to the conclusion, after agreeing with the findings of the Inquiry Officer, that the applicant was responsible for receiving an amount of Rs.3,376/- towards stitching charges due to his wife by affixing his own signature in the Bill Register and thereafter removing the Register from the almirah so that the relevant facts may not come to light. Accordingly, the applicant was reverted to his former post of Khalashi.

in the scale of Rs.750-940 on a pay of Rs.940 for a period of four years. The Appellate Authority has categorically disagreed with the finding of the punishing authority that the applicant had removed the Bill Register from the almirah. It has gone to the length of saying that the said charge has not been brought home to the applicant. However, it maintained the finding that the applicant received a sum of Rs.3,376/- The reasoning given by it for coming to this finding is this:

"I have however noted that you as well as your wife never bothered to claim the payment of Rs.3,376/- which is a fairly large amount. Thus I am of the view that, you have received the amount."

2. It is evident that the only reason given by the Appellate Authority for coming to the conclusion that the applicant received the said amount is the fact that the applicant as well as his wife did not care to claim the amount. The finding, therefore, is purely inferential. We are satisfied that the Appellate Authority has not acted rationally in drawing an inference against the applicant merely on account of the fact that he and his wife did not care to claim the amount. <sup>The fact, however,</sup> goes to show that they were not interested in claiming the amount. In our opinion, the best evidence in the case should have been the receipt which must have been obtained from the applicant, if, in fact, any payment was made to him. It is evident that the receipt was not produced either before the punishing authority or before the Appellate Authority.

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3. We had directed the Counsel for the respondents to produce the relevant record, including the receipt. Shri Sanyal, the learned counsel for the respondents, made a statement at the Bar that the record is not available. Whatever may be the reason for the non-production of record, in view of the facts and circumstances of the instant case, the applicant should get advantage of the fact that the record has not been shown to us. In any view of the matter, the applicant is entitled to the benefit of doubt.

4. We, therefore, set aside the disciplinary proceedings as against the applicant and quash the orders of punishment passed by the Appellate Authority on 4.1.1991. The applicant ~~shall~~ be given his wages on the footing that no order of punishment was ever passed against ~~him~~. There shall be no order as to costs.

*U. Savara*  
15-7-91  
(Ms. Usha Savara)  
Member (A)

*S.K.D*  
(S.K. Dhaon)  
Vice Chairman