

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

OA No.859 of 2013

Present: Hon'ble Mr. Swarup Kumar Mishra, Member (J)
Hon'ble Mr. C. V. Sankar, Member (A)

1. Ms. Sudhi Surendran aged 25 years, daughter of Late Surendran MN Acharay residing at Titilagarh, Cutkiapara, P.O:- Titilagarh, Dist:- Balangir Odisha, Helper-II, Office of SSE/Sig/Kantabanji, East Coast Railways, Sambalpur Division, At/P.O.:- Kantabanji, Dist;- Sambalpur, Odisha.

.....Applicant.

VERSUS

1. Union of India, represented through its General Manager, At/P.O.:- Chandrasekharapur, Bhubaneswar, Dist;-Khurda, Odisha.
2. Divisional Railway Manager & Revising Authority, East Coast Railway, At/P.O./P.S./Dist:- Sambalpur, Odisha.
3. Senior Divisional Signal and Telecom Engineer & Appellate Authority, East Coast Railways, Sambalpur, At/P.O./P.S./Dist:- Sambalpur, Odisha.
4. Divisional Signal and Telecom Engineer & Disciplinary Authority, East Coast Railway, Sambalpur, At/P.O./P.S./Dist:- Sambalpur, Odisha.

5. Senior Section Engineer (Signal) & Inquiry Officer, East Coast Railway, Sambalpur, At/P.O./P.S./Dist:- Sambalpur, Odisha.

6. Shri F. C. Sahoo, SSE Signal, Kantabanji, East Coast Railway, At/P.O.:- Kantabanji Dist:- Sambalpur, Odisha.

.....Respondents.

For the applicant : Mr. S. Mohanty , Advocate.

For the respondents: Mr. A. Mohanty, Advocate.

Heard & reserved on : 22.01.2021

Order on :24.02.2021

O R D E R

Per Mr. Swarup Kumar Mishra, Member (J)

The applicant by filing this OA, has prayed for the following reliefs under section 19 of the Administrative Tribunals Act, 1985:-

- (i) *Setting aside/quashing the order dated 17.10.2012 (Annexure A/10) removing her from the post of Helper-II of East Coast Railways as confirmed in the appeal by order dated 14.11.2012 (Annexure A/12) and in revision by order dated 07.03.2013 (Annexure A/14).*
- (ii) *Directing the respondents to reinstate the applicant with full back wages and other service benefits.*
- (iii) *And pass such other order/orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case and in the interest of justice and allow this application.*

2. The case of the applicants in brief as inter alia averred in the OA is that after of the death of her father, the applicant was given appointment on compassionate basis in Group D post vide letter dated 25.06.2009 (Annexure A/1). She was posted as Helper – II under Senior Section Engineer (Singal) Kantabnaji vide order dated 28.10.2009 (Annexure A/2) and she joined the said post on 03.11.2009 vide her joining letter at Annexure A/3. The applicant submitted that while she was continuing as such vide memorandum dated 04.07.2012 (Annexure A/4) she was served statement of article of charge and directed to submit written statement of defence within 10 days. The applicant submitted that she did not submit her defence statement and vide letter dated 15.08.2012 (Annexure A/5), the Inquiry Officer asked her to attend inquiry on 07.09.2012. Since she could not attend the inquiry on the said date due to some personal problem, the IO fixed the date to 17.09.2012 vide letter dated 07.09.2012 (Annexure A/6). The applicant submitted that she attended the inquiry on 17.09.2012 and neither any witness was examined by the management on its behalf to prove the charge nor any document was proved by the management in the inquiry and marked as exhibit in the inquiry. The applicant submitted that she was examined in the inquiry and was forced to give evidence

against herself and in the statement before the IO she had stated that she had taken three books of First Class Pass consisting of 150 pages out of which she used only 4 to 5 passes within 20 pages and handed over the rest to Sri F. C. Sahoo, SSE/Signal/Kantabanji on 12.06.2012 in presence of Sri N. Hikaka and Sri H. K. Seth two staffs in the office. The applicant submitted that she had categorically stated that she had not taken any 2nd class pass from the office and in question to inquiry officer she had said that as per instruction of SSE/Sig/KBJ she had accepted that she had accepted about 2nd class pass in her letter. The applicant submitted that she was forced to give evidence against herself by the SSE/Sig/KBJ who had pressurized her to admit that she had stolen 2nd class pass from the office to cover his own inefficiency.

3. The applicant submitted that she was informed to attend inquiry on 19.09.2012 and then on 22.09.2012. The applicant submitted that prior to 22.09.2012 she was pressurized by Sri F. C. Sahoo, SSE/Sig/KBJ to admit that she had stolen GP 10 2nd class passes and she was told that nothing would happen to her if she would admit and maximum punishment of deduction of the money value of the passes from her salary. The applicant submitted that she was threatened by Sri Sahoo of being handed over to railway police and her family members being sent to jail if she did not admit. The applicant

submitted that believing the words of Sri Sahoo she admitted that she had taken GP 10 2nd class passes and that she should be punished for the act done by her. She submitted that she had admitted of using 4/5 pages for her personal use and she had not sold the passes to anybody or earned money out of the passes. The statement of the applicant recorded on 17.09.2012 & 22.09.2012 are as Annexure A/7 series.

4. Thereafter the disciplinary authority vide his letter dated 26.09.2012 (Annexure A/8) forwarded copy of inquiry report to the applicant and instructed her to submit show cause within ten days. The applicant submitted that no tentative opinion of the disciplinary authority accepting the report or the punishment proposed was mentioned in the show cause. The applicant thereafter submitted her show cause vide letter dated 06.10.2012 (Annexure A/9). Thereafter the disciplinary authority vide letter dated 17.10.2012 (Annexure A/10) imposed punishment of removal from railway service with immediate effect. The applicant then preferred appeal vide letter dated 31.10.2012 (Annexure A/11) which was rejected by the appellate authority vide letter dated 14.11.2012 (Annexure A/12). The applicant then submitted revision petition dated 27/28.11.2012 (Annexure A/13) which was rejected vide letter dated 07.03.2013 (Annexure A/14). Thereafter the applicant made a representation

dated 03.09.2013 (Annexure A/15) to the GM, ECR, Bhubaneswar which has not been answered. Hence this OA.

5. The respondents in their counter inter alia averred that the applicant in her reply to the charges framed against her vide letter dated 14.07.2012 (Annexure R/1) and had accepted her guilt as she had done in her statement dated 09.06.2012, during inquiry on 17.09.2012 & 22.09.2012 and in her reply to the inquiry report dated 08.10.2012 as also in her representation dated 31.10.2012 (Annexure R/2). Further to that she in her representation dated 27.11.2012 (Annexure R/3) also admitted that she had stolen 1st class passes. The respondents submitted that in the inquiry conducted on 22.09.2012 Sri F. C. Sahu was a witness as mentioned in Annexure IV of memorandum of charges. The respondents submitted that she had confessed her guilt as she had committed crime and the allegation of pressure made against Sri F. C. Sahu is totally false and fabricated. The respondents submitted that after the inquiry report dated 26.09.2012 (Annexure R/4 series) was accepted it was delivered to the delinquent employee and that the IO cannot recommend or propose any punishment while issuing the inquiry report to the delinquent. The respondents submitted that the railway passes are valuable property of Railways and stealing of

this property is a crime. The applicant has admitted before the railway authorities in every stage of her representation had admitted to committing such crime which cannot be excused. The respondents submitted that the mercy petition of the applicant addressed to GM was also rejected vide letter dated 17.02.2014 (Annexure R/5) because she had committed misappropriation of railway passes.

6. The applicant in the rejoinder inter alia averred that Railway passes were kept in the office almirah and key was in custody of head of the unit Sri F. C. Sahoo and that she was persuaded/forced to admit before the IO that she had taken 2nd class pass. The applicant submitted that she was not aware of rules and regulation with regard to the railway pass since she was Group D employee with less than three years of service and had read up to class X and that she had used only 4 to 5 pages of first class pass for her journey to see her ailing mother and that she did not sell the passes for monetary benefits. The applicant further submitted that Sri F. C. Sahoo was not examined in her presence and neither she could cross examine him and statement of Sri F. C. Sahoo are not available on record. The applicant submitted that it is incorrect to say that she admitted her guilt on 09.06.2012 since no statement is available on record. The applicant submitted that her admission on

22.09.2012 before the IO regarding the use of 2nd class pass was not voluntary and she had retracted her admission but there is no corroboration on record to the retracted admission. The applicant submitted that the second show cause issued by the disciplinary authority should have mentioned the proposed punishment so as to enable the delinquent to make representation with regard to the proposed punishment and without mentioning the punishment she was caused serious prejudice and was denied reasonable opportunity to defend herself and there is violation of principle of natural justice

7. In the reply to rejoinder the respondents submitted Annexure R/1, R/2, R/3R/4, R/5, R/6, R/7 to fortify their action. It is also submitted that Sri F. C. Sahu was examined in the presence of the applicant by the IO on 22.09.2012 (Annexure R/8) and it was submitted that the applicant should have cross examined which was her duty which she had not done so IO is not responsible. The respondents submitted that established procedure were followed and inquiry report (Annexure R/9) was served to her which she never objected and appropriate action was taken by the disciplinary authority, appellate as well as revisionary authority as per laws.
8. Learned counsel for the applicant relied on some citations including the following:

- a) Hon'ble Supreme Court in the case of Sher Bahadur v Union of India reported in AIR 2002 SC 3030.
- b) CMD Coal India Limited v Mukul Kumar Choudhury reported in AIR 2010 SC 75
- c) Commissioner of Police and others v Sat Narayan Kaushik AIR 2016 Supreme Court 1464
- d) 2016 (Supp-1) OLR 340 at 348 Para 18 to 20 Dibakar Behera versus Union of India & ors.
- e) 2015 (Supp-1) OLR 904 at 911 para 11 Khirod Kumar Sahu v Odisha Gramya Bank & others.
- f) 2014 (II) OLR 258 at 263 and 264 Para 7 to 12

9. The details of Annexure I & II of the memorandum of charges against the applicant are extracted below:

ANNEXURE – I

"Article – 1

As reported by SSE/Sig/KBJ that Miss Sudhi Surendran Helper-II/KBJ working under SSE/Sig/KBJ had stolen the following railway passes and misutilized the passes without the knowledge of SSE/Sig/KBJ.

<i>Sl. No.</i>	<i>Class of Passes</i>	<i>Serial No. of Pases</i>	<i>Total No. of pages</i>
1	<i>Gp-8 (1st class)</i>	<i>049250 to 049259</i>	<i>10 pages</i>
2		<i>271100 to 271101</i>	<i>2 pages</i>
3		<i>049349</i>	<i>1 pages</i>
4		<i>049350 to 049352</i>	<i>7 pages</i>
		<i>049380 to 049381</i>	
		<i>049388 to 049399</i>	
5	<i>GP-10(2nd class)</i>	<i>570683 to 570699</i>	<i>17 pages</i>
6		<i>570798 to 570799</i>	<i>2 pages</i>

After the investigation by SSE (Sig)KBJ it was found that you are responsible for the above missing passes. The passes were misutilized by you for your own

purposes and you have confessed by your written statement and also two numbers of Gp-8 counter foils bearing No. 049380 and 049388 have been received from you. This shows that you have unauthorized utilized the Railway money value which is a clean case of misappropriation of Government property.

ANNEXURE II

Statement of imputation of misconduct and misbehaviour in support of the article of charge framed against Miss Sudhi Surendran, HP-II/KBJ.

Article – I Due to your indiscipline attitude and negligence of duties, for which you were stolen the above passes from the office of SSE/Sig/KBJ and misutilised by you for which railway administration work hampered very badly.

Article – II –

Article – III –

There by irregular and irresponsible in performing your duties you have violated the rule No. 3-1, (ii) & (iii) of Railway Services Conduct Rules 1966 pertaining to negligence of duty and unbecoming of a Railway Servant and render yourself liable for D&A action under extant rule.

10. The extract of representation dated 14.07.2012 after receiving the charge memo is as follows:

“With reference to the SF 05 on the subject noted above, I beg to put forth the following few lines with as ardent hope that this will merit your kind consideration for favourable redress.

That, I had a new comer to Railway having no knowledge about pass rules and the limitation of its use in the service career. As I had seen that passes are used frequently to staff when booked on duty to SBP to BBSR bearing that concept in my mind I had used the passes to travel on different occasions.

To be frank I had undertake to declared that, I had not committed it intentionally which has been incorporated in the article 1 charge to sustain on me alleging me that these are deliberate, but it is not true.

I have got this opportunity to brought out this fact before your kind notice in a most sincere manner that, my commitment is out come of the ignorance of rules and with the intention the exercise the right to use the railway passes as a bonafide railway employee and nothing else.

In view of the fact stated above, I fervently pray before your good self to be kind enough to consider my case sympathetically and initiate punishment as deemed proper with me with an introspection that I am girl child without father and only member to rear up my family member without me all my family remain under

starvation having no means of livelihood and I will bow before your authority to accept the punishment imposed on me and obliged.”

11. The inquiry report dated 26.09.2012 is extracted below:

“Miss Sudhi Surendran, Helper-II under SSE/Sig/KBJ has been issued with Major penalty charge sheet vide No. S&T/SBP/D&A/SS/12, Dt. 04.07.2012. The allegation is while working as Helper-II/KBJ, under SSE/Sig/KBJ had stolen the railway passes from Office of SSE/Sig/KBJ and misutilized the passes without the knowledge of SSE/Sig/KBJ. Hence for the above mentioned allegation, inquiry letter was sent to Miss Sudhi Surendran through registered post vide Receipt No. AR0515348966IN Dt. 16.08.12 (Lr. No. S&T/SSE/SBP/SS/D&A/1, Dt. 15.08.12) to attend the inquiry of 07.09.12 for stolen of the following passes.

Sl. No.	Class of Passes	Serial No. of Pases	Total No. of pages
1	Gp-8 (1 st class)	049250 to 049259	10 pages
2		271100 to 271101	2 pages
3		049349	1 pages
4		049350 to 049352	7 pages
		049380 to 049381	
		049388 to 049399	
5	GP-10(2 nd class)	570683 to 570699	17 pages
6		570798 to 570799	2 pages

The above mentioned Regd. Post Letter acknowledged by Miss Sudhi Surendran, but she had not yet attended the inquiry on 07.09.12 vide letter no. S&T/SSE/SBP/SS/D&A/2 dt. 07.09.12 Regd Post receipt no. AR0461262332IN dt. 07.09.12, again informed to party to attend enquiry on 17.09.12 at 09 hrs. Miss Sudhi Surendran, HP-II/KBJ attended inquiry on 17.09.2012 at 09.00 hrs, During her inquiry on 17.09.12, she admitted that she stolen three nos. GP-8(1st class) book total 150 pages out of which 20 pages, she used for personal matter which mentioned below:

Sl. No.	Class of Passes	Serial No. of Pases	Total No. of pages
1	Gp-8 (1 st class)	049250 to 049259	10 pages
2	Gp-8 (1 st class)	271100 to 271101	2 pages

3	Gp-8 (1 st class)	049349	1 pages
4	Gp-8 (1 st class)	049350 to 049352 049380 to 049381 049388 to 049399	7 pages

The rest pages returned to SSE/Sig/KBJ in presence of two staff Sri. N. Hikaka and Sri H. K. Sethi. Also she admitted that she used the all 20 pages in favour of her father late M.N.S. Achari from TIG to Alleppy.

Miss Sudhi Surendran was not accepted the stolen of GP-10 (2nd class pass) on 17.09.2012.

A next date had been fixed vide letter no. S&T/SSE/SBP/SS/D&A/3 dt. 17.09.12 and informed to Miss Sudhi Surendran and Sri F. C. Sahu, SSE/Sig/KBJ to attend inquiry on 22.09.2012.

During inquiry on 22.09.2012, Miss Sudhi Surendran accepted that she had stolen GP 8 (1st Class passes) and GP 10 (2nd class passes) of 19 pages Sr. No. 570683 to 570699 = 17 pages and 570798 to 570799 = 02 pages which damaged by herself. She had no any pass folio of used passes.

During inquiry of 22.09.2012, Sri F. C. Sahu, SSE/Sig/KBJ told that he had not taken charge of establishment of passes from his successor, when he posted at KBJ on 01.01.2009. Also he told that he is not looking the establishment and passes till date at his office. Being a unit-in-charge, he should know all the matter of office.

In view of the above in my opinion, Sudhi Surendran stolen the above mentioned passes and misused for her personal matter. It means that she has not cared to follow the rules of the organization.

It is concluded that the allegation levelled against Miss. Sudhi Surendran, HP-II/KBJ is justified.”

12. The representation of the applicant dated 06.10.2012 against the inquiry report is extracted below:

“ With reference to the S&P letter on the subject noted above, I beg to put forth the following few lines with as ardent hope that this will merit your kind consideration for favourable redress.

That, I had a new comer to Railway having no knowledge about pass rules and the limitation of its use in the service career. As I had seen that passes are used frequently to staff when booked on duty to SBP to BBSR bearing that concept in my mind I had used the passes to travel on different occasions.

To be frank I had undertake to declared that, I had not committed it intentionally which has been incorporated in the article 1 charge to sustain on me alleging me that these are deliberate, but it is not true.

I have got this opportunity to brought out this fact before your kind notice in a most sincere manner that, my commitment is out come of the ignorance of rules and with the intention the exercise the right to use the railway passes as a bonafide railway employee and nothing else.

In view of the fact stated above, I fervently pray before your good self to be kind enough to consider my case sympathetically and initiate punishment as deemed proper with me with an introspection that I am girl child without father and only member to rear up my family member without me all my family remain under starvation having no means of livelihood and I will bow before your authority to accept the punishment imposed on me and obliged.”

13. The speaking order dated 17.10.2012 of the disciplinary authority is extracted below:

“While working as Helper-II/KBJ in scale Rs. 5200-20200/-+GP-1800/-(RSRP) under SSE(Sig)/KBJ in S&T department of Sambalpur division Miss Sudhi Surendran have been taken up under Railway servant (D&A) rule 1968. A major penalty charge sheet has been issued vide this office’s Memorandum No. S&T/SBP/D&A/SS/12 dt. 07.07.2012, that Miss Sudhi Surendran has stolen the following railway passes and misutilized the passes without the knowledte of SSE/Sig/KBJ.

Sl. No.	Class of Passes	Serial No. of Pases	Total No. of pages
1	Gp-8 (1 st class)	049250 to 049259	10 pages
2		271100 to 271101	2 pages
3		049349	1 pages
4		049350 to 049352	7 pages
		049380 to 049381	
		049388 to 049399	
5	GP-10(2 nd class)	570683 to 570699	17 pages
6		570798 to 570799	2 pages

After investigation by SSE(Sig)KBJ it was found that Miss Sudhi Surendran is responsible for the above missing passes. The passes were misutilised by her for her own purposes. She has confessed her guilty. SSE(Sig)/SBP was nominated

to conduct inquiry in to the case vide this office letter No. S&T/TIG/D&A/SS/12 dtd. 31.07.2012. The enquiry officer fixed the dates of inquiry on 07.09.12, 17.09.12 and 22.09.12. CO had attended inquiry on 17.09.12 and 22.09.12. The EO had submitted a report signed on dt. 26.09.2012. The inquiry report was received by Miss Sudhi Surendran on dated 28.09.2012.

After going through the reply and other findings, it is clear that Miss. Sudhi Surendran has stolen and misutilized passes from the office of SSE(Sig)KBJ. This has been accepted by her. As appealed about intention, it is again quite clear that the actions committed by the CO i.e. Miss Sudhi Surendran were deliberate and intention was not good. Stealing and use of passes in the name of a non-existing person cannot be unintentional. This is gross misconduct and a clear case of misappropriation of Government property.

Hence I as the disciplinary authority decide to impose a punishment of

“Removal from Railway Service with immediate effect.”

14. The appeal of the applicant dated 31.10.2012 to the appellate authority is extracted below:

“With reference to you letter No. s&T/SBP/D&A/SS/12 dated 17.10.2012 I beg to put forth the following few lines for your kind consideration and sympathetic consideration please.

Sir, I am working as Helper-II/KBJ under SSE/SIG/KBJ with utmost satisfaction of my superior authority without any remarks, but due to some misfortune and melancholy I got a charge sheet to be removed from my service.

Sir, I was performing my duties as per instruction of SSE i.e. Sri F.C. Sahoo and Sr. Clerk i.e. Sri Surendra Nag.

I am only a girl child who looks after my family. My mother is a chronic patient. She had recently undergone through a medical surgery due to which she is in Kerala for her further treatment.

Due to my financial problem I had to travel to my native place. I had taken some bunch of pass which I thought it would help me to travel at my native place for my mother’s treatment. At the time of investigation, verification and audit, the same pages could not be traced by the authority which was beyond my knowledge. Actually the said document was at my home. Due to my mental pressure and mental fatigue I could not remember it. And at the eleventh moment I could remember the rest passes which was kept in my house. I immediately submitted the rest relevant documents before my concerned authority.

Sir, I am facing much more difficulties, and as well as I have been terminated from my post. I am requesting with my tearful eyes and crave to reinstate my job. Sir, this is the first time I have committed this great mistake. In future I will not commit the same mistake.

With folding hands I am imploring your Honour to kindly consider my genuine grievance and I may be reinstated in the job. If I will be excused then I will not repeat the same mistake in my future.

Therefore, I am requesting you to kindly consider my redressal application and an opportunity may kindly be given to me, I promise I will not repeat the same in future if I wil do, then I may be punished in accordance with law.

For this act of your benevolence I shall be subject to your gratitude.”

15. The order dated 14.11.2012 of the appellate authority is extracted below:

“While working as Ex-helper-II/KBJ in scale of Rs. 5200-20200/-+GP-1800/- (RSRP) under SSE(Sig)/KBJ in S&T department of Sambalpur division you were taken up under Railway Servant (D&A) rule 1968. A major penalty charge sheet was issued vide this office’s memorandum No. S&T/SBP/d&A/SS/12 dt. 07.07.2012. During the inquiry you have admitted that you had stolen the 20 pages of 1st class and 19 pages of 2nd class passes. Further you have admitted that you used the 1st class duty passes in the name of your late father.

From your representation, you have only mentioned that due to your ignorance of rules, you had used the above passes in the name of your late father knowingly since he is dead.

And as per pass rules, misuse of passes is a serious offence. The punishment for misuse of passes is Dismissal from service or removal from service.

Hence the punishment imposed by the disciplinary authority i.e. “Removal from service with immediate effect” stand good.”

16. The letter dated 27.11.2012 to the reviewing authority is extracted below:

“With reference to letter no dated 17.10.12 I was removed from service. I beg to put forth the following few lines for your kind consideration and sympathetic consideration please.

Sir, myself, Sudhi Surendran, Heper-II/KBJ under compassion I had got the job in Group-D at Kantabanji in the yeasr 2009 November 03. Me as a Helper my in-charge allowed me to do the work at office, during that period late Sri Rambabu

was there as Senior clerk at office. At his and SSE's instruction I was doing my job without any failure.

Sir, before the death of Late Rambabu according his instruction I had wrote the duty passes for the staff at first time. But after the death of Sri Rambabu my in-charge Sri F.C. Sahoo, SSE, SIG/KBK had told me to write pass and P.T.O's but truly Sir I was not knowing that pass and P.T.O.s are written by responsible Grade C staff and it is not written by the helper. Still I was not knowing the rules and regulations of passes & PTO's because no one among the staff or in-charge have guided its important. Though other Group-C staff were in the office, I was entrusted to write passes and P.T.O's.

Sir, that I had a new comer to Railway having no knowledge about passes rules and limitations of its use in service career. As I had seen that when Sri Rambabu was alive at his time I had seen that passes are used frequently to staff when they are booked on duty and privilege pass without any delay they have given to staff. Bearing that concept in my mind I had used the passes to travel on different occasion.

Sir, after using the passes by me I came to know that it was an important document of Railway as valuable as money. I had admitted my fault in from of SSE i.e. Sri F.C. Sahoo and as a witness two staff also were there in office they are Sri Hemant Kumar Seth (Sr. Cowkidar) and Sri Narasing Hikaka (Sr. Trollyman).

Sir, within 20 pages of 1st class passes I had used only four to five pages in it but the rest 1st class passes I had not used, within that two to three had damaged but Sir, rest 19 pages i.e. 2nd class I do not know anything about it. When our in charge came to know about the 2nd class passes that are missing from office he told me to accept it, otherwise he will report to R.P.F. and they will come to your house and put you and your family in jail. When Sri F. C. Sahoo was making me understand that I should accept the full responsibility of missing 2nd class passes Mr Hemant Kumar Seth and Sri Narasingh Hikaka were there at the spot.

During the 1st inquiry held on 17.09.2010 Sri Behera, Sir asked about the 2nd class passes I had replied him that I had not taken the second class passes but as per the instruction of SSE I had accepted that I had taken which you can see in the inquiry report which was held on 17.09.2012. On the same day of inquiry Sri F. C. Sahoo asked me that why I have not accepted the 2nd class passes during the inquiry and also he told me that if you would have accepted that it will no be affected on your job and still you have not accepted it.

But truly Sir, I don't have any knowledge about the 2nd class passes, that who have taken and used. Meanwhile at the 2nd inquiry that on 22.09.2012 I had admitted that I had taken it but Sir, before attending the inquiry Sri F. C. Sahoo told me to accept it otherwise after inquiry RPF will come to your house and they will put me in jail without giving me any kind of bail. Bearing that concept and looking after my window mother and young sister I accepted that I had taken it. The two keys of the almirah were kept by Sri F. C. Sahoo and Sri Surendra Nag in which passes were being kept.

I am only a girl child who looks after my family. My mother is chronic patient. She has high blood pressure and depression and she has recently undergone through a medical surgery due to which she is in Kerala for her further treatment. Sir I am facing much more difficulties and as well as I have been terminated from my post. I am requesting with my tearful eyes and crave to reinstate my job. Sir, this is the first time I have committed the great mistake. In future I will not commit the same mistake..

With folding hands I am imposing your honour to kindly consider my grievance and I may be reinstated the job. If I will be excused then I will not repeat the same mistake or any other mistake in my future.

Sir, I am being helpless and innocent girl without a father if I will be removed from my service my family, my ailing mother and my young sister will be in starvation and will suffer a lot of problem. Hence I am prostrating you and imploring you to kindly consider my application and reinstate my job.

Therefore I am requesting you to kindly consider my redressal application and an opportunity may kindly be given to me. I promise I will not repeat the same mistake in my future. If I will do so I may be punished in accordance with law.

For this act of your benevolence I shall be subject to your gratitude."

17. The speaking order dated 07.03.2013 of the revisionary authority is extracted below:

"As regards Appeal of the charged officer, I had kept at abeyance the proceedings till finalizing and fixing up the responsibilities on irregularities. In the mean time the charged officer had submitted another representation received on 19.02.2013 for early disposal of appeal. The findings on irregularities have been received. The appeal is thereby disposed.

The procedure laid down has been followed in dealing the D&A case. The charged officer had been provided reasonable opportunity to defend charges. It is evident from the enquiry that due care on vital money value items such as passes and its

safe custody was not taken by the office. The charged officer was provided scope of misusing the passes. The charged officer had confessed misusing the passes, at least some of the passes. Even if the offense is committed because being new to the establishment, it is unpardonable. As per existing guidelines minimum punishment laid down for such offenses is removal from the service. During the intervening period, I tried to collect the performances, conduct and quality of works executed by her, which could be commended, so that I find grounds of diluting the laid guidelines on punishment. I am afraid I found nothing worth commending and therefore refrain to provide any relief to the charged officer.

I uphold the punishment ordered by DA nad upheld by Appellate Authority. The punishment of "Removal from service" shall hold good."

18. Heard learned counsel for both the sides and have carefully gone through their pleadings, written notes, citations relied by them and materials on record.

19. It was submitted by learned counsel for the applicant that the applicant was given job on compassionate ground in Group D post after the death of her father. It was submitted by her that there was violation of principle of natural justice in the departmental proceeding conducted against her and that there is serious irregularity and illegality in conducting the departmental proceeding. In order to fortify her submission she had also submitted that there was no witness examined on the side of the department and only the so called admission of the applicant has been used against her for the purpose of imposing the punishment. It is seen from the materials on the record that PW 1 Shri F. C. Sahu has been examined form the side of the department. His

statement was recorded by the inquiring officer on 22.09.2012. The delinquent applicant was also asked in general about the matter including the evidence available against her in the departmental proceeding on the same day i.e. 22.09.2012, therefore we do not accept the claim made by the applicant before this Tribunal that no witness was examined by the department in the departmental inquiry against her. The fact that the statement of the delinquent applicant has been recorded on the same day and in the absence of any categorical averment in the OA and so also in the memorandum of appeal, review petition by the applicant filed before the competent authorities of the respondent department. With regard to the statement of PW 1 and the vague plea tried to be raised during the course of argument that applicant was not given opportunity to cross examine PW 1, has to be rejected. It was submitted by learned counsel for the applicant that PW 1 was examined behind the back and knowledge of the applicant but the circumstances negatives the same claim made on behalf of the applicant before this tribunal.

20. It was submitted by learned counsel for the applicant that applicant has denied regarding the allegation made against her that she had taken and used any second class pass and any show called

admission by the applicant was obtained by coercion and by threatening of higher authorities of department that her family members will be sent to jail. The said aspect was for the first time raised by the delinquent applicant while she submitted her reply to second show cause notice and also while giving answer to question number 17 and some other question asked to her by the inquiring officer as seen from Answer A/7 series. We do not accept the vague claim made by the delinquent applicant at subsequent stage before the authorities that any such admission was obtained from her by coercion or pressure. Besides that she has herself admitted regarding use of some first class passes for her personal use. It was also claimed by the applicant that although she belongs to Group D category of employee she was entrusted with duty of distribution of passes. The said claim made by the applicant is not supported by any supporting documents or evidence on record. Besides that she has also not clarified from which source and manner in which she obtained the first class passes in question, therefore the plea taken on behalf of the applicant that it was a bonafide mistake on the part of the applicant to use first class passes cannot be accepted by this Tribunal. The very fact that she had gone to the extent of using the first class passes on some occasion

after obtaining it illegally cannot be overlooked. The finding in this regard and her own admission also goes against any such plea or stand taken before this Tribunal on behalf of applicant.

21. Learned counsel for the applicant submitted that the said punishment imposed on the applicant is highly disproportionate and would shock the conscience of the Tribunal. He has also submitted that the applicant whose education is class 10 and belongs to Group D cadre had only served for about three years when the punishment has been imposed. The circumstances in which the matter was detected and the conduct of the delinquent applicant do not persuade us to sympathise with the applicant, solely on the plea that she was ignorant about railway rules as she had only three years of service experience. Taking into consideration the serious allegation as proved against the applicant which shows that department cannot trust and repose confidence on the applicant, therefore the punishment imposed on the applicant by the respondents is not illegal or irregular and does not need any interference by this Tribunal, as this Tribunal also finds that punishment imposed on the applicant is neither harsh nor disproportionate to the misconduct proved against her. We also do not find that the decision making process in

the departmental proceeding has in any way been vitiated.

22. Accordingly the OA is dismissed but in the circumstances without any order to cost.

(C. V. SANKAR)
MEMBER (A)

(SWARUP KUMAR MISHRA)
MEMBER (J)

(CSK)