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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.45 OF 1992
Cuttack, this the 3rd day of April, 1997

Shri K.N.B.Rao Applicant

Vrs.

Union of India and others Respondents

(FOR INSTRUCTIONS)

- 1) Whether it be referred to the Reporters or not?
 - 2) Whether it be circulated to all the Benches of the Central Administrative Tribunal or not?

Km.
(K. M. AGARWAL)
CHAIRMAN

✓ (S. SOM) 97
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 45 OF 1992
Cuttack, this the 3rd day of April, 1997

CORAM:

HONOURABLE SRI JUSTICE K.M.AGARWAL, CHAIRMAN
AND
HONOURABLE SRI S.SOM, VICE-CHAIRMAN

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Shri K.N.B.Rao,
alias K.Nagabhusan Rao,
aged 53 years,
s/o late K.Swami, Office of D.P.O.,
South Eastern Railway,
Khurda Road, District-Puri

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Applicant

-versus-

1. Union of India, represented by the Chairman,
Railway Board, Rail Bhawan, Government of India,
New Delhi.
 2. General Manager, South Eastern Railway, Garden Reach
Calcutta-43
 3. Chief Personnel Officer (Admn.),
South Eastern Railway, Garden Reach, Calcutta-43
 4. Divisional Railway Manager, South Eastern Railway,
Khurda Road, District-Puri.
 5. Divisional Personnel Officer, South Eastern Railway,
Khurda Road, District-Puri
- Respondents.

Advocate for applicant - Dr. V. Prithvi Raj

Advocates for respondents - M/s B. Pal & O.N. Ghosh

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ORDER

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3/4/92*

SOM, VICE-CHAIRMAN

In this application under Section 19 of the
Administrative Tribunals Act, 1985, the applicant has prayed for
quashing the order of removal from service passed by respondent
No.4, Divisional Railway Manager, S.E.Railway, Khurda Road, on
17.8.1989 (Annexure A-10 and its enclosure). The applicant
had earlier moved the Tribunal in O.A.No.350 of 1989 in which

in the judgment delivered on 19.4.1991 it was observed that the impugned order had not been served on the applicant and therefore, the Tribunal held that he had a right of appeal against the removal order. The applicant was directed to prefer an appeal to the appropriate authority with liberty to approach the Tribunal if he was dissatisfied with the appellate order. Accordingly the applicant appealed to Chief Personnel Officer, S.E.Railway, Garden Reach, Calcutta, in his letter dated 27.5.1991 (Annexure A-11). This was rejected in order dated 14.10.1991 (Annexure A-12). Thereafter the applicant has come up again before the Tribunal. In the Original Application, the prayer was limited to quashing the order removing him from service. Subsequently in M.A.No.865 of 1995 the applicant sought for the leave of the Tribunal to amend his Original Application to bring within its scope the order of the appellate authority which was also challenged by him. The facts of this case as these appear from the application are indicated below.

2. At the relevant time, the applicant was working as Head Clerk in the Personnel Branch of the office of the Divisional Personnel Officer, S.E.Railway, Khurda Road. On 19.9.1986 disciplinary proceeding for imposition of major penalty was initiated against him with three charges which were interlinked. It was alleged that the applicant, while working as Head Clerk in the Pass Section of the office of Divisional Personnel Officer, defrauded the Railway administration by issuing ten Second Class passes bearing Nos. 752151, 752154 to 752162 on 13.7.1984 from

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Puri to Amritsar and back, to some local people who are not entitled to avail of Railway passes. This was the first charge. The second charge was that out of ten passes, three passes No.752151, 752154 and 752161 were issued in the names of persons who were not Railway employees whereas the other seven passes were issued in the names of Railway employees who had never applied for the passes. Thirdly, it was alleged that the applicant gave a false statement in respect of issuing of these ten passes to the local people, stating that he was compelled to do so as he was threatened by some unknown outsiders by showing knife. At the conclusion of the enquiry, the impugned order removing the applicant from service was passed.

3. The learned lawyer for the applicant has challenged the order of removal as well as the confirming appellate order on several grounds which are discussed below in seriatim.

4. The first point raised by him is that it was not known to the applicant or to Railway administration as to who was his initial appointing authority. According to him, in case of doubt on this point, under instructions of the Railway Board, it has to be taken that General Manager, S.E.Railway, is the appointing authority and therefore, the impugned order of removal is liable to be set aside because it has been passed by Divisional Railway Manager, S.E.Railway, Khurda Road, an authority subordinate to General Manager, S.E.Railway. It is true that departmental authorities in their letter dated 27.6.1989 (Annexure A-6) informed the applicant that as he had been last promoted to the post of Head Clerk by the Divisional Personnel Officer, he would be the appointing authority. However, the applicant was asked to show, in case he had any record, if

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he was appointed by any authority higher than the Divisional Personnel Officer. The applicant in his reply dated 28.7.1989 indicated that he could not produce any record regarding his initial appointment or subsequent promotion. On the basis of these two letters, the above ground has been taken challenging the order of removal from service. The learned lawyer for the applicant has referred us to the decision of Full Bench of the Tribunal in the case of Shri Gafoor Mia and others v. Director, DMRL, 1988(2) A.T.J. Vol.5 559. In that case the Full Bench have considered the question as to who could be appointing authority under Railway Servants (Discipline and Appeal) Rules, 1963. It has been held therein that authorities other than General Manager acquire the power to appoint Class III and Class IV staff not by virtue of a Central Act or Regulation but by virtue of the delegation. Under the facts and circumstances of the batch of cases which were considered in the above Full Bench decision, it was held that authorities delegated with power of appointment by the General Manager cannot by the mere fact of delegation initiate disciplinary proceedings or issue chargesheet. It is not necessary for us to go into the elaborate reasoning developed in the above decision. It would only suffice to note that in this case the applicant was admittedly appointed to the the post of Head Clerk by the Divisional Personnel Officer, but in view of seriousness of charges against him the final impugned order of removal from service has been passed by the Divisional Railway Manager who is an authority higher than the Divisional Personnel Officer. It, therefore, cannot be held that in case of the applicant it was not known as to who was his appointing

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authority . It is also to be noted that the departmental respondents had informed the applicant that the Divisional Personnel Officer would be his appointing authority and he was asked to provide any document available with him which proves otherwise, but the applicant has failed to do so and as such, it is not possible for him now to take this ground. Moreover, in the above Full Bench decision, the judgment of the Hon'ble Supreme Court in Om Prakash Gupta Swadheen v. Union of India, AIR 1975 SC 1265, has been considered and the relevant observation has been extracted. This is quoted below:

"In the absence of any definition of the 'appointing authority' in the Central Civil Services (Temporary Service) Rules, 1965 in relation to a temporary Government servant not holding a specified post, as the appellant was, we think the terms 'appointing authority' must be understood in its plain and natural meaning, namely the authority which appointed him."

In the instant case, it is the Divisional Personnel Officer who appointed him on promotion to the post of Head Clerk and as such, it is not possible for him to argue that the order passed by the Divisional Railway Manager, a higher authority, is invalid on the ground taken by him. Further, this point was taken by him in his appeal petition dated 27.5.1991 (Annexure A-11). The appellate authority in paragraph 3 of his order (Annexure A-12) has dealt with this matter and held that the impugned order passed by the Divisional Railway Manager is not invalid on the ground taken by him. For reasons indicated above, we agree with the appellate authority, and this contention of the learned lawyer for the applicant is, therefore, rejected.

5. The second contention of the learned lawyer for the applicant is that in course of the enquiry he was not

given reasonable opportunity to answer the charges against him. He has urged several points in support of this contention and these are discussed below. Firstly it has been stated that along with the chargesheet a list of witnesses was not given to him and this has prejudiced him. This contention is without any merit because in course of the enquiry the Enquiring Officer did not examine any witness and the enquiry was completed basing entirely on documents. Therefore, the question of supplying a list of witnesses to the applicant does not arise and this ground is, therefore, rejected. The second contention under this head is that he was not supplied with the documents asked for by him and this has resulted in prejudice. From letter dated 1.10.1986 of the applicant (Annexure A-2) it appears that on receipt of the chargesheet, he asked for copies of the documents by which articles of charges were proposed to be substantiated as also a copy of investigation report submitted by the Vigilance Department. Respondent no.5 in his reply dated 18.11.1986 (Annexure A-3) supplied all the documents except the Pass, Pass Book, Pass Account Registers and Dak Book, which he was asked to peruse. From this it appears that the documents relied on by the prosecution were supplied to him. Registers which are big volumes could not obviously have been supplied to him and, therefore, he was asked to peruse the relevant entries in the Registers. This, according to us, is sufficient compliance with the rules regarding supply of documents. As regards supplying of copy of the vigilance report, it is no doubt true that in the statement of imputation relating to Article II a reference was made to the investigation report, but in the enquiry charges have been

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held proved not on the basis of the vigilance investigation report but on the basis of admission by the applicant. Sometimes on receipt of an allegation against a Government servant, a preliminary enquiry is made for determining if any further action is required to be taken. This preliminary enquiry report does not become a necessary document in the departmental proceeding which may be started on the basis of allegations received unless in course of the enquiry this preliminary enquiry report is relied upon. That is not the case here and therefore, it cannot be held that non-supply of the report of the Vigilance Department, which is a confidential document, has resulted in prejudice to the applicant. It further appears from the enclosure to written note of argument submitted by the learned lawyer for the applicant that there is apparently no rule or instruction for supplying such vigilance reports to the delinquent officer where the report is not relied upon in course of the enquiry. It seems that All India Railwaymen's Federation in their letter dated 3.10. 1983 to Secretary (Establishment), Railway Board, had urged for issuing of necessary instruction to the Railway administration requiring that where memorandum and articles of charges have been issued on the basis of Vigilance Inspector's reports, such reports are to be supplied to the delinquent officer along with other basic documents. This letter itself shows that there is no such instruction requiring that vigilance reports in such cases should be supplied. The learned lawyer for the applicant has not shown any instruction in the Railways requiring that such reports even when not relied upon in course of the departmental enquiry, must be supplied to the delinquent officer. In this view of the matter, this contention is rejected.

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6. The next submission of the learned counsel for the applicant is that the documents have been proved without calling for any oral evidence for proving the same and therefore, the documents not having been properly exhibited during the departmental enquiry should not have been legally relied upon. It must be appreciated that in a departmental enquiry strict rules of evidence under Indian Evidence Act, 1872 are not applicable. In this case, the applicant has admitted writing out of the passes and connected documents and in view of his admission, it was not necessary to call upon other witnesses to prove that these documents had been written by the applicant. That brings us to the general question of admission of the applicant. Originally the applicant took the stand that some outsiders threatened him with knife and under the threat he wrote out the passes. This was mentioned in the statement of imputation. In course of the enquiry, however, he took the stand that there was a lot of work in the Pass Section and the passes were written out by him on being requested by some other colleague whose name he did not remember. In course of the enquiry, the Enquiring Officer has found out that no applications were made by the seven Railway employees in whose names passes were issued. It seems that before issue of pass to a Railway employee, his Pass Account has to be checked up to see how many passes he has availed of. This was also not done. For issuing of passes to the Railway employees, particulars of their families are required to be obtained. In this case, such particulars were not obtained. Passes to the Railway employees were not issued through the Dak Book and the signatures of the Railway employees in whose names passes were issued were not taken. All

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these points have been established on the basis of documents available. We find that the Enquiring Officer has applied his mind and considered the plea of the applicant before rejecting it in his enquiry. The disciplinary authority and appellate authority have passed reasoned orders, the latter specifically considering different grounds taken by the applicant in his appeal petition. In the facts and circumstances of the case, we find no infirmity in the impugned order of removal as also the confirming order of the appellate authority.

7. In the result, the application fails and is hereby dismissed, but without any order as to costs.

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(K.M.AGARWAL)
CHAIRMAN

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(S.SOM) 3/4/97
VICE-CHAIRMAN