CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO.584/2000, O.A.586/2000 & O.A.597/2000

Friday, this the 4th day of October, 2002.

CORAM:

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

O.A.584/2000

B.C.Anilkumar,
Laboratory Superintendent Grade-III,
Southern Railway, Health Unit,
Quilon. - Applicant

By Advocate Mr TC Govindaswamy

Vs

1. Union of India represented by
The Secretary to Govt. of India,
Ministry of Railways,
Rail Bhavan, New Delhi.

2. The General Manager,
Southern Railway,
Madras.

3. The Chief Persodnnel Officer,
Southern Railway,
Madras.

4. The Chief Medical Director,
Moore Market Complex,
Southern Railway,
Madras-3.

5. The Senior Divisional Personnel Officer,
Southern Railway,
Trivandrum Division,
Trivandrum-14. - Respondents

By Advocate Mrs Sumathi Dandapani

O.A.586/2000

K.C.Tomy,
Lab Superintendent Grade-II,
Railway Hospital, Palghat. - Applicant

By Advocate Mr TC Govindaswamy

Vs

1. Union of India represented by
its Secretary to Government of India,
Ministry of Railways,
Rail Bhavan, New Delhi.

2. The General Manager,
Southern Railway,
Headquarters Office,
Park Town.P.O.
Chennai-3.

3. The Chief Personnel Officer,
Southern Railway,
Headquarters Office,
Chennai-3.

4. The Chief Medical Director,
Moore Market Complex,
Southern Railway,
Chennai-3.

5. The Senior Divisional Personnel Officer,
Southern Railway,
Palakkad Division,
Palakkad.

- Respondents

By Advocate Mrs Sumathi Dandapani

O.A.597/2000

Meena Benny,
Lab Superintendent Grade-II,
Southern Railway,
Ernakulam.

- Applicant

By Advocate Mr TC Govindaswamy

1. Union of India represented by
its Secretary to Government of India,
Ministry of Railways,
Rail Bhavan, New Delhi.

2. The General Manager,
Southern Railway,
Headquarters Office,
Park Town.P.O.
Chennai-3.

3. The Chief Personnel Officer,
Southern Railway,
Headquarters Office,
Chennai-3.

4. The Chief Medical Director,
Moore Market Complex,
Southern Railway,
Chennai-3.

5. The Senior Divisional Personnel Officer,
Southern Railway,
Trivandrum Division,
Trivandrum-14.

- Respondents

By Advocate Mrs Sumathi Dandapani

The application having been heard on 8.8.2002 the Tribunal on 4.10.2002 delivered the following:

O R D E R

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

These three O.As. turn on identical facts and issues. Hence, as agreed to by the parties concerned, these are taken up for disposal by a common order.

2. The central issue involved in these three O.A.s is the sustainability of the 3rd respondent's communication No.P(S)524/VIII/Lab Supdts. dated 15.5.2000 in the light of the terms and provisions of the Railway Board's letter RBE No.187/98 dated 17.8.98(A-6) on the subject of introduction of new pay scales for certain categories of employees as recommended by the Vth Central Pay Commission. The crux of the matter is the withdrawal of the benefit of the restructured higher scales already allowed to the applicants and their reversion to the old or the lower scales. By the impugned orders A-1 and A-2, A-7 order dated 3.5.99 granting the applicants fitment in the higher scales has been rescinded and the applicants have been notified about the recovery, in due course, of the consequent over payment allegedly made.

3. Since the issue is common, we consider it expedient to take O.A.No.584/2000 as the lead case. The essential facts are as under:

4. The applicant, Shri B.C.Anilkumar was recruited and appointed as Lab Superintendent (L.S. for short) Grade-III in September, 1994. He joined the post on 6.9.94, in the pre-revised scale of Rs.1320-2040 in the Medical Department of

Southern Railway, Mysore. He was confirmed in the post of Lab Superintendent Grade-III with effect from 6.9.96. In pursuance of the recommendations of the Vth Central Pay Commission, the Railway Board issued A-6 notification dated 17.8.98 introducing new scales for certain categories of employees. In order to simplify the procedure, new scales of pay in accordance with the percentages/numbers indicated in the annexure to A-6 were also introduced. Accordingly, the cadre of L.S. would, after the introduction of the new scales, consist of L.S. Gr.III/Chemist in the scale of Rs.5000-8000, L.S. Grade-II in the scale of Rs.5500-9000, L.S. Grade-I in the scale of Rs.6500-10500 and Chief Lab Superintendent in the scale of Rs.7450-11500. The prescribed ratio or percentage in relation to L.S. Grade-III, Grade-II, Grade-I and Chief Lab Superintendent respectively was 35:45:15:5 with reference to the total number of posts. As per Railway Board's letter (A-6), the number of posts to be operated in the revised pay scales was with reference to the sanctioned cadre strength as on 1.8.98 and the beneficiaries of the new scales would draw pay in the respective higher grades with effect from 1.8.98. Paragraph 2(g) of A-6 dealt with adjustment of posts in any of the newly introduced scales which were already in existence as well as adjustment of the number of posts that may be found in excess of the number admissible in terms of the revised percentages in respect of any grade in any particular cadre. The said paragraph requires to be reproduced in full:

> "2(g) If any of the scales now being introduced are already in existing on any of the Railway/Unit, the posts in the same will be adjusted in the cadre structure to be now brought into force as per the revised percentages mentioned herein and total number of posts should not exceed the number of posts as mentioned herein. If prior to issue of this letter, the number of posts existing in any grade in any particular cadre exceeds the number admissible in terms of the revised percentages, the excess may be allowed to continue to be phased out progressively with the vacation of the posts by the existing incumbents."

A-7 order dated 3.5.99 was based on the office memorandum P(S)524/VIII Lab Supdt. dated 30.4.1999 as per which 33 LS Grade-I, 19 LS Grade-II and 16 LS Grade-III posts were to be redistributed in the grades of Chief Lab Superintendent Grade-I, Grade-II and Grade-III in the prescribed 5%, 15%, 45% and 35% respectively. The decision as per A-6 letter was implemented in the light of O.M. dated 30.4.1999 by the 3rd respondent with the approval of the competent authority vide A-7 order. Accordingly, 3 posts of Chief Lab Superintendents, 10 posts of L.S.Gr.I, 31 posts of L.S.Gr.II and 24 posts of L.S.Gr.III were found eligible for the benefit of fitment in the new scales. The applicant was given new scale of Rs.5500-8000 replacing the existing scale Rs.4500-7000 as Lab Superintendent Grade-III with effect from 1.8.98 under the new dispensation. It has also to be mentioned that the lists of L.S. who were fitted in the newly introduced scales attached as Annexures 1 to 3 to A-7 show their Sl.Nos., names, Unit or Division to which they are attached, the existing designation and the old scales and the replaced designation and the new scales. While being so, the applicant together with several other similarly placed L.S. Grade-III and Grade-II, received show cause notice dated 27.3.2000 issued on behalf of the 3rd respondent directing him to show cause as to why he should not be reverted to the lower grade in the scale of Rs.4500-7000 on the alleged ground that his promotion was erroneous due to certain errors in taking the total number of vacancies to be considered for conferment of the replacement scales in the grades of Lab Superintendent Grade-III, Grade-II, Grade-I and Chief Lab Superintendent (vide A-10). It was also proposed in A-10 letter to rescind the promotion granted with effect from 1.8.98 and to continue him in the scale of pay which existed prior to his placement in the new

pay scale and further informing him that the amount of over payment on account of such erroneous promotion would, in due course, be recovered. The applicant raised serious objections against the proposed action by a reply dated 15.10.2000 addressed to the 3rd respondent (A-11). A further reply was given by A-12 letter dated 25.4.2000. Rejecting the applicant's objections, A-7 order dated 3.5.99 placing the applicant in the higher replacement scale was rescinded and the applicant was reverted to the old scale of Rs.4500-7000 in the post of Lab Technician/Assistant Chemist which he was allegedly holding on 1.8.98. Similar orders were passed in respect of several other Lab Superintendents also, though the scale and grade may be different. To be specific, the applicants in O.A.586/2000 and 597/2000 who were holding the post of Lab Superintendent Gr-II prior to 1.8.98 and who were placed in the new scale of 5500-9000 as against 5000-8000, were also reverted to the scale of 5000-8000 in LS Grade-II post.

4. Being aggrieved, the applicant seeks the following main relief:

> Call for the records leading to the issue of A-1 and A-2 and quash the same and direct the respondents to grant the consequential benefits thereof.

5. The respondents have filed a reply statement opposing the application by stating that a grave error was committed in the distribution of the posts for fitment in the replacement scales of Rs.7450-11150, 6500-10500, 5500-9000 and 5000-8000 inasmuch as the total number of posts taken for distribution was 68 as against the correct number of 52. The instructions with regard to the introduction of the new scales including

[illegible] as contained in Railway Board's letter dated 17.8.98 [illegible] (vide R-1) had been misunderstood and had thus given rise to erroneous instructions as per O.M. dated 30.4.99 wherein the cadre strength was shown as 68 posts as on 1.8.98. This error was pointed out in Railway Board's letter dated 3.11.99(R-2) according to the respondents. Corrective action was taken thereafter and an O.M. dated 23.3.2000 was issued showing the correct number of posts as 52 for distribution in the replacement scales on the basis of the percentages fixed for L.S. Grade-I, Grade-II and Grade-III as well as Chief Lab Superintendent. The respondents have stated that in view of the unavoidable rectification of an apparent mistake, the impugned reversion orders were inevitable.

6. We have considered the pleadings and have also heard Shri Martin G Thottan, learned counsel for the applicants and Smt.Sumathi Dandapani, learned counsel for the respondents.

7. According to Shri Martin G Thottan, learned counsel for the applicants in the 3 O.A.s, the Railway Board's communication dated 17.8.98(A-6) did not envisage any promotion but only conferment of higher replacement scales in respect of all the existing L.S. Grade-III, Grade-II and Grade-I as on 1.8.98. Only one new post viz, Chief Lab Superintendent was created with a totally new scale. The replacement scale of L.S. Grade-I was also new. The applicant in O.A.No.584/2000 was initially appointed as L.S. Grade-III and was confirmed accordingly and therefore, he could not be reverted to a lower post, the learned counsel would urge. Similarly, the applicants in O.A.No.586/2000 and O.A.597/2000 were holding the post of L.S. Grade-II as per A-5 order and thus as on 1.8.98 they were in that grade. Shri

Martin would strongly contend that by taking recourse to an interpretation of A-6 notification which was entirely different from the interpretation which formed the basis of A-7 order dated 3.5.99, the latter order could not be rescinded and the applicants could not be reverted to any grade lower than the one in which they were remaining as on 1.8.98 immediately prior to the implementation of the orders contained in A-6 letter. The scales to which the applicants were ordered to be restored did not match their respective grades, viz, L.S. Grade-III, in the case of applicant in O.A.No.584/2000 and L.S. Grade-II in the case of applicants in O.A.No.586/2000 and O.A.No.597/2000. Drawing our attention to Para 2(g) of A-6 notification of the Railway Board dated 17.8.98, learned counsel would submit that if prior to issue of A-7 notification the number of posts existing in any grade in any particular cadre exceeds the number admissible in terms of the revised percentages, the excess may be allowed to continue to be phased out progressively with the vacation of the posts by the existing incumbents. Accordingly, learned counsel would plead that the applicants whose grades were the same after 1.8.98 ought to have been allowed to be in the restructured scales only, and the excess, if any, was to be phased out progressively with the vacation of the posts by the applicants. Learned counsel would argue with considerable force that even if the number of posts taken for distribution amongst the restructured pay scales was wrongly taken as 68 as against 52, the applicants would still be not liable to be reverted either in grade or in scale since their position in the respective grade was quite high and they should, accordingly, find a place in the restructured pay scales in their respective grades. It is further contended by the learned counsel for the applicants that the respondents had no authority to demote the applicants from the respective grades

and in any case, the impugned orders were made without jurisdiction since the authority to take a decision whether the appointment was erroneous or not was the General Manager, Southern Railway. With regard to the relief sought, learned counsel for the applicants would invite our attention to the Central Administrative Tribunal, Madras Bench's common order dated 4.12.2000 in O.A.Nos.584, 585, 612, 621, 652 and 683 of 2000 wherein the very impugned orders in these O.A.s were challenged. The counsel would state that the Madras Bench has considered the entire facts and held that the reversion of similarly placed L.S.persons to lower pay scales on the basis of a revised interpretation of the terms and provisions of the Railway Board's letter dated 17.8.98 was unsustainable.

8. Smt.Sumathi Dandapani, learned counsel for the respondents on the other hand would set great store by the pleadings and contentions in the respondents' reply statement. It was pointed out by the learned counsel for the respondents that the cadre strength of Lab Superintendents was 52 posts and not 68 as erroneously considered while issuing the letter dated 30.4.99 with regard to the distribution of posts to be made in the light of A-6 notification. According to the learned counsel, the mistake occurred due to an erroneous interpretation of A-6 notification inasmuch as the distribution of posts instead of being confined to the total number of L.S. posts of 52 in the newly introduced scales which were already existing was made on the total number of 68 posts in the entire cadre, which included 16 posts of Lab Superintendents/Technician/Assistant Chemist category in the scale of Rs.4500-7000. Applicant in O.A.584/2000, according to the learned counsel for respondents, was in the scale of Rs.4500-7000 in the grade of Lab Superintendent/Technician/Assistant Chemist as on 1.8.98. The

applicants in O.A.586/2000 and 597/2000 were L.S. in the scale of Rs.5000-8000 as on 1.8.98. Because of the erroneous increase in the number of posts, i.e. 62 instead of 52, to be distributed amongst the four restructured scales in pursuance of A-6 notification, the applicants in the three cases also got promotions/placements which they would not have got had it not been for the error in taking the number of posts, according to the learned counsel. By the impugned orders, this error had to be and was set right, learned counsel would plead. With regard to the C.A.T., Madras Bench's common order dated 4.12.2000 in O.A.No.584/2000 and connected cases, the learned counsel would submit that the C.A.T., Madras Bench's decision in respect of the issue under consideration has been contested by the respondents by filing various Writ Petitions before the Hon'ble High Court of Madras and that no stay has, however, been granted so far by the High Court.

9. We have gone through the facts of the case and have carefully considered the contentions of the learned counsel on either side.

10. We find fact that this very issue of grant of higher scales by order dated 3.5.99 in pursuance of Railway Board's letter dated 17.8.98(referred to as A-6 and A-7 herein) and the subsequent withdrawal thereof as per orders identical to A-1 and A-2 orders impugned herein, has been considered by the C.A.T., Madras Bench in its composite order dated 4.12.2000 in O.A.Nos.412, 584, 585, 612 to 621, 652 and 683 of 2000. We notice that the applicants therein belonging to the different grades of L.S. like the three applicants in the O.A.s before us were also aggrieved by the revocation of the office order No.MD/74 dated 3.5.99 (i.e. same as A-7 considered herein) granting them the benefit of replacement scales in the

respective grades of LS and reverting them to their respective pay scales before the implementation of the order dated 3.5.99. The Madras Bench of the Tribunal found that the orders challenged involved interpretation and application of the Railway Board's letter RBE No.187/98 (A-6). After considering the facts of the cases with reference to the terms and provisions of the Railway Board's letter dated 17.8.88, more particularly para 2(g) thereof, and the subsequent orders and office memoranda, the Tribunal held as under:

> "It is clear on a perusal of this clause (Para 2(g) of Railway Board's letter dated 17.8.98 -Sic) that the number of posts existing in any grade in any particular cadre is protected even though the number exceeds the number admissible in terms of the revised percentages. The term 'grade' ought not be confused as meaning pay scale. The word grade means a position in the scale of ranks. It refers to different grades such as Grade I, Grade-II and Grade-III in the cadre of LS. The word grade does not denote any scales which the posts in different grades carry. Thus in the cadre or category of LS there are posts in different grades namely Grade-III, Grade-II and Grade-I. The grades-I, II and III were existing even as on 1.8.98 prior to the issue of the Railway Board's letter dated 17.8.98 though the pay scales were different at that time. The new grade introduced by the letter dated 17.8.98 is only the grade of Chief Lab Superintendent. Simultaneously the Railway Board's letter introduced two new pay scales along with two existing to the four grades of posts namely Grade-III, Grade-II and Grade-I and Chief Lab Superintendent. It is not correct on the part of the respondents to say there were no posts of LS Gr.I prior to the issue of Railway Board's letter dated 17.8.98. There were posts but they carried the lower pay scale of Rs.5500-9000. These posts were placed in the higher and new pay scale of Rs.6500-10500 by the Railway Board's letter dated 17.8.98. Otherwise, the designation of the posts in the new pay scale of Rs.6500-10500 would have been changed from LS Gr.I. The only group of posts in which both the posts and the pay scales were new is the group of the posts of Chief Lab Superintendent. All other grades were already existing prior to the issue of Railway Board's letter but they carried lower pay scales and higher pay scales were introduced by the Railway Board's letter dated 17.8.98."

Taking specific instances from the cases under consideration before it, the Madras Bench of the Tribunal further observed:

> What the respondents have done actually by the impugned orders dated 15.5.2000 is to strip the applicants of the grades in which they were functioning as on 1.8.98."

Referring to the instance of a LS Grade-II, Shri Arputharaj, whose name incidentally figures in Annexure No.2 attached to A-7 order dated 3.5.99, the Tribunal further held:

> "The applicant cannot be stripped of the post of LS Gr.II just to place him in the pay scale of Rs.5000-8000. That will amount to reversion from the post of LS Gr.II to LS Gr.III because the pay scale of Rs.5000-8000 is attached to the post of LS Gr.III after the Railway Board's letter dated 17.8.98. It is precisely to get over such a situation which cannot be sustained that the Railway Board in its wisdom has mentioned in para 2(g) that if prior to issue of this letter the number of posts existing in any grade in any particular cadre exceeds the number admissible in terms of the revised percentages, the excess may be allowed to continue to be phased out progressively with the vacation of the post by the existing incumbents. The learned counsel for the respondents at one stage feebly argued that there was erroneous designation in the case of the applicants. We have to mention this only to reject it. The applicant Arputharaj has been working as LS Gr.II from 1.3.93 as admitted by the respondents. We fail to undertand how the respondents in their order dated 15.5.2000 can say that the applicant is not LS Gr.II. The order is patently illegal. Whatever the redistribution of posts as per revised percentages which the respondents are relying upon can apply only prospectively and will not apply to the existing incumbents of the posts like the applicants."

11. We are in respectful agreement with the findings of the Madras Bench of the Tribunal cited above. As on 1.8.98, Shri B.C.Anilkumar, applicant in O.A.No.584/2000 was LS Grade-III in the pay scale of Rs.4500-7000. He continued to be LS Grade-III in a higher scale with effect from 1.8.98 as a result of implementation of the orders contained in A-7. There is no justification to demote him to the grade of Technician/Assistant Chemist just to revoke the replacement scale granted to him in LS Grade-III. He was not holding the post of Technician/Assistant Chemist as on 1.8.98. The grade he was occupying as on 1.8.98 cannot be denied to him as rightly pointed out by Madras Bench of the Tribunal. Para

2(g) of A-6 order serves the purpose of taking care of the situation where the number of posts operated in a restructured scale are in excess of the number of posts permitted under the new ratio of distribution. The same is the case for the other applicants, viz, K.C.Tomy in O.A,586/2000 and Ms Beena Benny in O.A.597/2000. These two applicants were LS Grade-II as on 1.8.98 in the pay scale of Rs.5000-8000. They cannot be reverted as LS Gr-II in the scale of Rs.5000-8000 now since no such scale is there in respect of LS Gr-II. Thus in effect, they are reverted to LS Gr-III. This cannot be upheld. The applicants in O.A.586/2000 and 597/2000 are entitled to continue as LS Gr-II in the restructured scale after 1.8.98 in pursuance of A-7 order issued in the light of the Railway Board's letter A-6. The applicants' case that even if the total number of posts in the cadre of L.S. to be fitted in the newly introduced pay scale is taken as 52, all the applicants would find a place in the list by dint of their seniority position also cannot be brushed aside. All of them are shown to be within the 52 posts. This position has not been categorically disproved by the respondents with any facts and figures.

12. Since the merits of the whole issue have been considered in detail, we do not find it necessary to enter upon a discussion of the question of competence/jurisdiction of the 3rd respondent to make the impugned orders.

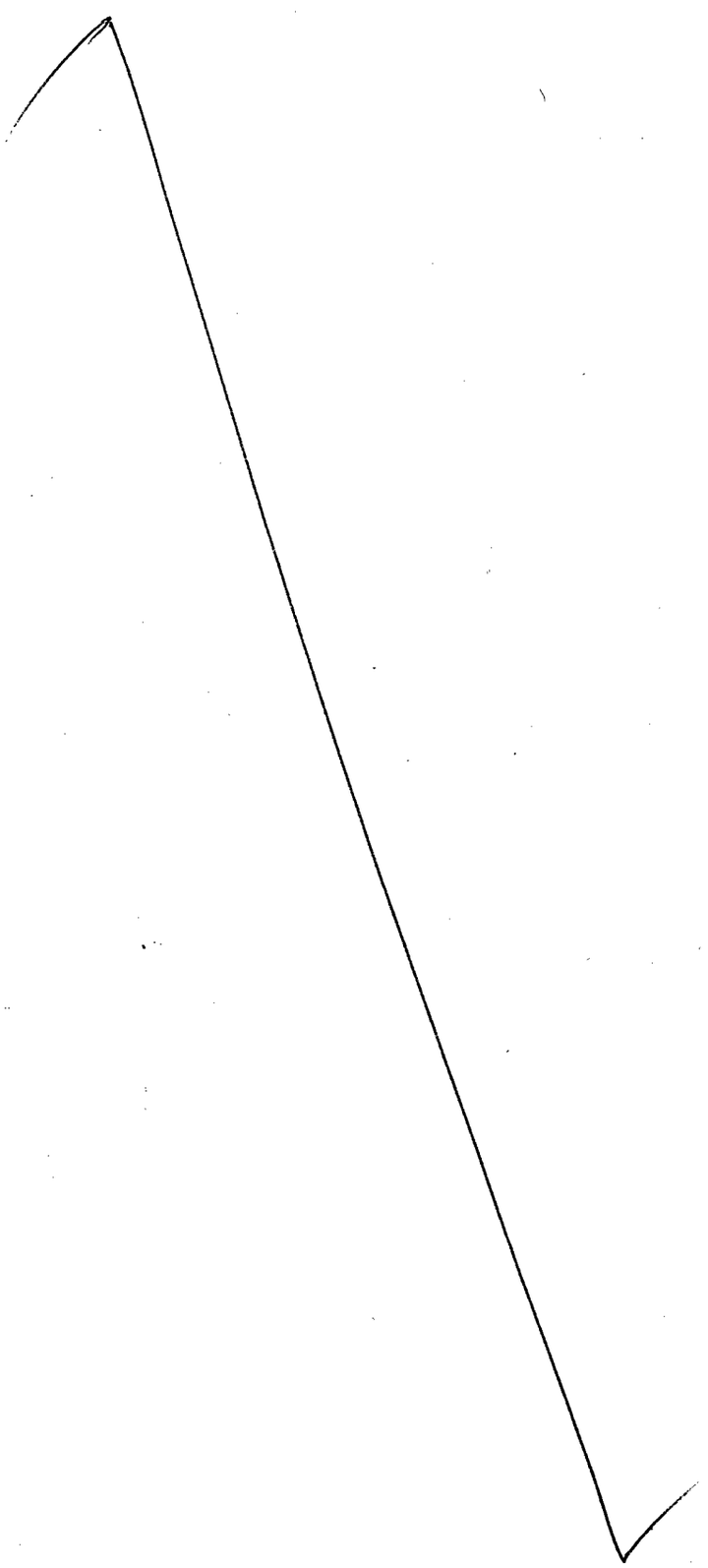
13. In the light of the detailed discussion in the foregoing paragraphs and respectfully following the findings of the Madras Bench of the Tribunal in the order dated 4.12.1999, we hold that the impugned orders A-1 and A-2 are liable to be set aside. We set aside the impugned orders A-1

and A-2 in all the three cases, and direct the respondents to grant the applicants all the consequential benefits that flow therefrom. There is no order as to costs.

Dated, the 4th October, 2002.

Sd/-
(T.N.T.NAYAR)
ADMINISTRATIVE MEMBER

Sd/-
(A.V.HARIDASAN)
VICE CHAIRMAN



APPENDIX

Applicant's Annexures

1. A-1: True copy of the letter No.P(S)524/VIII/LAB SUP PTS dt.15.5.2000 issued by the 3rd respondent.

2. A-2: True copy of the Office Order No.MB-73 dt.15.5.2000 issued by the 3rd respondent.

3. A-3: True copy of the Office Order No.B/T-525/VII/MD Vol.VI dt.25.5.2000 issued by the 5th respondent.

4. A-4: True copy of the Office Order No.MD-109/92 dt. 22.5.92 issued by the Senior Personnel Officer, S.Railway, Madras.

5. A-5: True copy of the Office order No.26/97/MD dt.26.9.97 issued by the 5th respondent.

6. A-6: True copy of the Railway Board's order bearing R.B.E.No.187/98 dt.17.8.98 along with its Annexures issued by the Railway Board.

7. A-7: True copy of the Office order No.MD.74/99 dt.3.5.99 issued by the 3rd respondent.

8. A-8: True copy of the Memorandum bearing No.P/S.525/VIII/LAB SUPDT issued by the 3rd respondent.

9. A-9: True copy of the Office Order No.II/99/MD dt.13.5.99 issued by the 5th respondent.

10. A-10: True copy of letter dt.27.3.2000 communicated to the applicant by 3rd respodnent.

11. A-11: True copy of the reply dt.13.4.2000 submitted by the applicant to the 3rd respondent.

12. A-12: True copy of the additional reply dt.25.4.2000 submitted by the applicant to the 3rd respondent.

CERTIFIED TRUE COPY
Date 16/10/01

Section Officer (Judl)