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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ADDITIONAL BENCH
AT HYDERABAD.

O.A.NO. 822 OF 1992.

BETWEEN

G.SRINIVASULU, DSTE/SOUTH CENTRAL RAILWAY
SECUNDERABAD.

.. Applicant.

And

GENERAL MANAGER,
SOUTH CENTRAL RAILWAY,
RAIL NILAYAM,
SECUNDERABAD.

and others.

.. Respondents.

REJOINDER FILED ON BEHALF OF THE APPLICANT.

I, G.Srinivasulu, S/o Sri G.Venkata Ramaiah, aged about 49 years working as DSTE/Liaison, South Central Railway, Secunderabad do hereby solemnly and sincerely affirm and state as follows:-

- 1) That I am the applicant herein and therefore well acquainted with the facts of the case.
- 2) The averments made in the Counter affidavit by the respondents are totally denied as false and are not tenable in the light of the following submissions.
- 3) In reply to the para No.2 of the Counter, I submit that at no point of time the respondents have informed or made known that the procedure for adopting suitability of the officers for adhoc promotion to senior scale was required to be assessed awarding points to the gradations and fitness given in the Confidential Reports of the Officers. It is arbitrary on the part of respondents to prescribe them for an officer being found suitable as to secure the minimum 17 points during the preceding five years period. There is no rational behind fixation of such a scale at 17 points. All this seems to be arbitrary, capricious and according to the convenience of the respondents to suit their needs. While

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so in the same para (2) (d), they also contend that during February, 1990, the procedures adopted for assessing the performance of the official, the assessment was required to be made on overall performance as reflected in the five corresponding Confidential Reports dispensing with the points system. The introduction of the points system and the dispensing it thereafter is totally arbitrary and with no purpose except to suit their own needs. There is no rational behind introducing a particular system and to withdraw abruptly without intimation to the officials which is in violation of Principles of Natural Justice and Articles 14 and 16 of the Constitution. The entire exercise of considering the gradations/fitness in the five Confidential Reports for the year, 1984-'85 to 1988-'89 awarding below 17 points on the ground that the Committee did not assign the points does not bear water as the respondents are silent in which year I have secured less points which resulted in accruing less than 17 points during the block period of five years, as it was not communicated to me. The criteria said to have been laid down for being found suitable for promotion to Senior Scale is to draw the rating from the Annual Confidential Reports which have been communicated from time to time. I submit that in none of my Annual Confidential Reports communicated to me so far, indicated any such adverse remarks, from which this inference of evaluating less points which were awarded by the Committee. Therefore, I am at loss to know how the ratings have been given below 17 points when there were no adverse remarks in Annual Confidential Reports. It is only a concocted inference that I have been awarded less points during one particular batch of five years while respondents found me fit in the subsequent year i.e. February, 1990 basing on overall performance duly dispensing with point system.

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Admittedly, when the overall performance of official is taken into consideration under the system of awarding points as well as consideration under overall performance system, the basis is the only Annual Confidential Reports which could not have been deferred for two different systems when the same Annual Confidential Reports were scrutinised for both the purposes. Therefore, at a particular point I was not awarded the required points and at a different point I was found fit in overall performance seems to be paradoxical and it was made out only with a specific purpose of depriving me for promotion to the senior scale. It is further submitted that "An entry in the Confidential Report that the Railway servant is not fit for promotion shall be deemed to be an adverse remark and the whole entry including the reasons for the remark shall be communicated to the Railway servant concerned. "Average" remarks shall not be treated as an adverse remarks." The Honourable Supreme Court of India in S.P.Gupta Vs. President of India AIR, 1992 S.C. 149 held that there cannot be a privilege for the respondents to claim confidentiality to make available the required documents especially the Annual Confidential Reports of the applicant and the minutes of the meeting of the screening committee where he had been considered for selection as also for super time scale, which is necessary to be disclosed to the applicant so that the applicant may be able to present his case properly. Non-fulfilling of this vital requirement would doubtlessly be detrimental to the Administration of Justice. (Hari Ram Meena Vs. State of Rajasthan (1989) 10 ATC 230 Jodhpur).

I, further submit that the Rules concerning the Confidential Reports under 1608 and 1609 of Railway

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Establishment Code Volume I clearly indicate that a Railway Servant shall not ordinarily be given an unfavourable Confidential Report before an opportunity has been taken preferably at a personal interview or if that is not practical by means of a personal letter pointing to him the direction in which his work has been unsatisfactory or the faults of character or temperment etc. which require to be remedied. It is further submitted that the occasions/incidences should be cited to support the adverse entries if any, which was not done by the Reporting/Reviewing Authorities. The said Rules further stipulate that in no circumstances should a Gazetted Railway Servant be kept in ignorance for any length of time that his superiors after sufficient experience of his work are dis-satisfied with him; where a warning might eradicate a particular fault, the advantages of prompt communication are obvious. In the instant case no such adverse remarks were communicated to me in all the preceding years of Confidential Reports from 1984-'85 to 1990 which do not contain any such remarks warranting withholding of awarding minimum required points.

5. It is further submitted that during the period I was said to have scored less than the required minimum points, I was working in Railway Electrification organisation, Vijayawada/Kazipet. Further, I submit that I came on transfer to Railway Electrification/Vijayawada and reported for duty as ASTE/D/RE/BZA on 1.5.1985. As per CPM/RE/BZA Office Order No.8/86, dt:30.7.1986, I have been temporarily been transferred to Kazipet as ASTE/Cables/RE/Kazipet to execute the main Telecom Cable laying between Secunderabad - Kazipet (Contract Work) keeping the post of ASTE/D/RE/BZA vacant till date.

6. Unfortunately, the contractor could only complete about

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25% of total work in 12 months eventhough they are required to complete 100% work within six months period. Thus, my prolonged temporary transfer to KZJ. Lapses on the part of Contractor were also known to DSTE/RE/S.C.Railway/KZJ and other Senior Officers. The DSTE/RE/S.C.Railway/KZJ while endorsing my observation had addressed a letter to M/s.Sri Srinivasa Enterprise, Railway Contractor, Thotavari Street, Main Bazar, Eluru pointing out that the said contractor did not employ the requisite number of labour and was lagging behind very much in the schedule of work. The delay in execution of the work by the then Contractor was attributed to me by the then C.S.T.E./RE which in fact it is evident from the documentary evidence that the delay was on the part of the then Contractor. Obviously, it is a fact known to me that the then Contractor was chosen by Sri N.Thandapani, the then CSTE/RE/BZA by-passing the lowest contractor, with an intention to camouflage his recommendations in choosing the particular contractor and as a coverage operation of the contractor's delay in execution of works in the stipulated time as per the contractor agreement, he might have resorted to comment adversely on my Annual Confidential Reports. The facts as stated above can be verified from the documents annexed but such adverse remarks concerning the above works were not communicated to me to enable me to refute such allegations.

7. During the course of performance of my duties I had pointed out several serious lapses concerning with 1) Execution of works and (2) The Safety of travelling Public by Rail which was upheld by the Principal Head of Department when I had refused to sign any Safety Certificate without approved Circuit diagrams, and brought the matter to the Principal

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Head of Department, who having recognised the importance of such suggestions, had instructed Chief Project Manager, Railway Electrification (Annexure 13, Page 36 of O.A.) that he should ensure that approved signed circuit diagrams are issued so that slip-shod working does not affect Safety of travelling public. He had also observed that on inquiry from Sri Rajendra Kumar, Chief Signal Engineer to check up whether there was any truth in the submissions made by me and that it was found out that my statement was correct. While agreeing with my statement, the Principal Head of Department who is competent to make rules pertaining to the S&T Branch of South Central Railway had cautioned other Officers and Additional General Manager (expenditure control) obviously for the purpose of checking and declaring me who was the then ASTE (Gazetted Officer) surplus by a Senior Scale Officer who is not competent to do so. It is therefore obvious that this incident must have prejudiced the concerned authorities, who initiated, reported and reviewed my Annual Confidential Reports, to comment anything adverse against me which had ultimately resulted in awarding less number of points but such an adverse comment has not been brought to my notice giving me an opportunity to refute such remarks as prescribed in the Rules.

8. It is further submitted that I had represented to the General Manager, South Central Railway, Secunderabad as back as 25.9.1990 in which I had made it clear that some officers might have been given outstanding and others like me must have been rated un-naturally and I have also requested to ignore negative remarks if any against me by the concerned officers who were prejudiced. I expressed my doubt that there is every reason to believe and substantiate that certain

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officials must have mis-informed the Chief Signal and Telecommunications Engineer against me. Against this representation there was neither reply nor inquiry conducted by the authorities which tantamounts and proves that there were no adverse remarks and I was found fit in all respects compared with my juniors (Annexure 19, Page 46 of O.A.).

9. It is further submitted that the respondents in para (3) averred that the date of promotion to Senior Scale on adhoc basis will have no effect for considering his absorption in junior scale which is done on the basis of Group 'B' seniority. Incidentally, the Railway Board had issued a notification No.E(GP)/92/1/55, dt: 15.9.1992 communicating the orders of the President appointing the Group 'B' officers of S&T Department substantively to the junior scale of I.R.S.S.E. with effect from 23.9.1992 in which my name is not figured for substantive appointment and my juniors have been given the said appointments. Therefore, the contention that absorption in junior scale is done on the basis of Group 'B' seniority is totally false and distortion of the facts which the respondents have resorted to. In the said notification officials from 80 to 86 are all juniors to me who have been promoted ignoring my seniority. It is further submitted that after my filing O.A. in the Honourable Tribunal on 1.9.1992, the respondents have issued a Confidential Report in No. SG.CON.2-C, dt: 28.10.1992 for the year ending 31.3.1992 in which remarks purporting to be adverse remarks were communicated only to substantiate their failure for selecting me to the cadre of junior time scale especially after filing case in the Honourable Tribunal, which amply proves the malacious intention on the part of the respondent to scuttle my promotional avenues. The very same confidential report comments Omy best standards of quality of work while agreeing

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that I possess the qualities of involvement and applications with deeper technical knowledge and sincere and hard work. I had also represented against the notification issued on 15.9.1992 promoting junior officials substantively to the junior scale to the General Manager articulating various issues vide my representation dt. 25.11.1992 for which there is no response as on date.

10. It is further submitted that public to Parliamentarians and illiterate to Doctorate are anticipating for Total Quality Management of Travel and Safety. The Railway Authorities have got elaborate system of safety organisation and periodical updating the staff knowledge to implement safety norms. WHEREAS in my case, few officials who are supposed to be the custodians of Rules, Regulation and safety in Administrative set up are perpetually discouraging me ⁽ⁱⁿ⁾ observing safety and Quality in technical works, which is evident from my submissions in the O.A. It is further submitted if this is the status of Gazetted Railway Servants, the constraints of other staff will be unfathomable.

11. It is further submitted that I have been following Rules, Regulations of the Railways and the local instructions meticulously. I have been selected in Limited Departmental Competitive Examination open for the serving Railway employees and I have been placed No.1 in the merit list. It is therefore, submitted that constraints imposed upon me by way of regular discouragement for the systematic work as required by the existing Rules, Regulations and the local instructions especially the rules pertaining to the safety of travelling public are followed. I am being subjected to the extremities of hardships in not selecting me to the Senior Scale on adhoc as per seniority as well as to the junior scale of I.R.S.E.E. It is strange that when a Government Railway Servant who is discharging his duties freely and frankly, is subjected to tension by the Senior Officers, (who are supposed to be the Rule makers and Rule protectors) with vindictive attitude disturbing

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my mental tranquility. It is in this back drop, the Annual Confidential Reports are maintained by the persons who are supposed to be un-polarised with their serene thinking ^{but are acting} to the detriment to the interests of the sincere and honest officials who are following the Rules and Regulations i.e. the officers under their control especially in the Gazetted Cadre.

12. Therefore, in the light of submissions made above, I pray that the Honourable Tribunal may be pleased to issue directions to the respondents to promote me to the cadre of senior scale with effect from 2.4.1990 i.e. the date that my juniors were promoted with all the consequential benefits and pass such other and further order or orders as the Honourable Tribunal may deem fit and proper in the circumstances of the case.

G. Srinivasulu
APPLICANT.

V E R I F I C A T I O N .

I, G. Srinivasulu, S/o Sri Venkata Ramaiah, DSTE/Liaison, South Central Railway, Secunderabad do hereby verify that the contents mentioned above in the rejoinder are true to the best of my knowledge and belief and no material facts have been suppressed.

HYDERABAD,
Dt: 7-10-1993

G. Srinivasulu
APPLICANT.

[Signature]
COUNSEL FOR THE APPLICANT.