EMPLOYMENT RELATIONS TRIBUNAL
AWARD
RN 271/11, RN 272/11, RN 273/11, RN 274/11, RN 275/11, RN 277/11

In the matter of:-
RN 271/11 Mrs Savitah Seewoosungkur-Jagutpal (Disputant No 1)

And

Ministry of Health & Quality of Life (Respondent No 1)
Ministry of Civil Service & Administrative Reforms (Respondent No 2)

RN 272/11 Mr Harilall Mungroo (Disputant No 2)

And

Ministry of Health & Quality of Life (Respondent No 1)
Ministry of Civil Service & Administrative Reforms (Respondent No 2)

RN 273/11 Mrs Manorama Bhuttoo (Disputant No 3)

And

Ministry of Health & Quality of Life (Respondent No 1)
Ministry of Civil Service & Administrative Reforms (Respondent No 2)

RN 274/11 Mrs Soobhadra Ramdoyal (Disputant No 4)

And

Ministry of Health & Quality of Life (Respondent No 1)
Ministry of Civil Service & Administrative Reforms (Respondent No 2)

RN 275/11 Mrs Satiabama Mungroo (Disputant No 5)

And

Ministry of Health & Quality of Life (Respondent No 1)
Ministry of Civil Service & Administrative Reforms (Respondent No 2)

RN 277/11 Mr Jaylall Shirao (Disputant No 6)

And

Ministry of Health & Quality of Life (Respondent No 1)
Ministry of Civil Service & Administrative Reforms (Respondent No 2)
The above six cases have been consolidated with the agreement of all parties. The terms of reference in the above cases bearing cause numbers RN 271/11, RN 274/11 and RN 275/11 are identical and read as follows:

“Payment of retention allowance to me should be backdated as from September 2008”

The terms of reference in the other cases bearing cause numbers RN 272/11, RN 273/11 and RN 277/11 read as follows:

“Payment of retention allowance to me should be backdated as from August 2005”

The Disputants were not assisted by counsel but each had consented to be represented by Disputant No 6 who was a Principal Nurse Educator. Respondents Nos 1 and 2 were each assisted by Counsel. The Disputants have each filed Statements of Case and the Respondents have in turn filed Statements of Defence and Statements of Reply. The Disputants have then filed Replies to the Statements of Defence and Statements of Reply of Respondents Nos 1 and 2.

The Disputants have not adduced evidence before the Tribunal. The representatives of Respondents Nos 1 and 2 were also not called to depose before the Tribunal when the case was heard and only a representative of the Pay Research Bureau (hereinafter referred to as the “PRB”) was called as a witness on behalf of Respondent No 1. The facts of the different cases are basically not in dispute and the only issue to be determined in the present matter is the interpretation to be given to the 2008 PRB Report which will include the main report and the Errors, Omissions and Clarifications of the 2008 PRB Report (hereinafter referred to as the “EOC”). As per the pleadings exchanged, the Disputants were relying on paragraph 30.139A of the EOC coupled with paragraph 30.137 of the main 2008 PRB Report (Volume II Part I).

The Tribunal has examined the evidence adduced before it, the pleadings and the submissions of counsel. The retention allowance was first recommended by the High Powered Committee for officers (subject to conditions laid in the recommendations) in the “Nursing Cadre” (and not the Nursing Group). It is not disputed that the High Powered Committee never included grades in the Nurse Educator Cadre in the list of grades entitled to the retention allowance. In the Reply of Disputants Nos 2, 3 and 6 to the Statement of Reply of Respondent No1 at paragraph 12.2, it is provided:

“I.... do further believe that the High Powered Committee had not included the grades of the Nurse Educator Cadre and that of the Midwife Educator Cadre in the list of grades who are entitled to the payment of Retention Allowance because no request to this effect was submitted to the High Powered Committee as a result of the erroneous and filtered information fed by Respondent No 1 to Respondent No 2…”

The PRB in its main 2008 Report acknowledged the fact that the retention allowance was applicable only to the following officers: relevant Nursing officers and incumbents
in the other grades of the cadre up to the level of Regional Nursing Administrator as well as incumbents in the Community Health Nursing Cadre.

Paragraph 30.136 of the 2008 PRB Report (Volume II Part I) reads as follows:

“At present, Nursing Officers who have completed their bonded period and incumbents in the other grades of the cadre up to the level of Regional Nursing Administrator as well as incumbents in the Community Health Nursing Cadre are eligible to a monthly retention allowance equivalent to two increments at the point they have reached in their salary scales irrespective of whether they are at the top of their salary scales or not. We are maintaining the payment of this allowance for the coming five years.”

The PRB then went on to recommend as per paragraph 30.137 of the same report (vide above) the following:

“We recommend that Nursing Officers who have successfully completed the bonded period as well as Charge Nurses, Ward Managers, Nursing Supervisors, Nursing Administrators, Regional Nursing Administrators, Community Health Nursing Officers, Senior Community Health Nursing Officers and Principal Community Health Nursing Officers should continue up to 30 June 2013 to be eligible to two additional increments at the point they have reached in their salary scales irrespective of whether they are at the top of their salary scales or not, subject to satisfactory performance and upon recommendation of the Responsible/Supervising Officer.”

Following this recommendation, it was clear that Principal Nurse Educators, Senior Nurse Educators, Nurse Educators, Senior Midwife Educators and Midwife Educators were not eligible for the retention allowance. However, in the EOC, it was recommended that the following paragraph 30.139A be inserted after paragraph 30.139 of the 2008 PRB Report (Volume II Part I):

“The provisions of paragraphs 30.137 and 30.138 should equally apply to incumbents in the grades of Principal Nurse Educator, Senior Nurse Educator, Nurse Educator, Senior Midwife Educator and Midwife Educator.”

The issue, thus is, what is the effective date of this recommendation 30.139A? The EOC provides as follows:

“1.25 The recommendations contained at Chapter 2 of this EOC Report should, in principle, be read as an integral part of the main 2008 PRB Report, subject to relevant provisions on effective date. Changes and recommendations that have been brought, among others, to facilitate the implementation process made at Chapter 3 to deal with specific circumstances should be read along with the main Report.”

There are special provisions in relation to “Effective Date” in the EOC and they read as follows:
“1.28 Having regard to the nature of and the reasons for the changes made in this Report recommendations for improved conversion, wherever they appear, should be implemented only hypothetically from 1 July 2008 and effectively from 1 July 2009, except where otherwise expressly stated. Similarly, a flat salary which has been upgraded in relation to the salary recommended in the main Report, as a result of the foregoing, should take effect only as from 1 July 2009.

1.29 Recommendations for newly introduced allowances as well as increases to allowances already provided in the main Report, and called by whatever name, should, for the same reasons, take effect as from 1 July 2009.

1.30 Recommendations not related to the provisions of 1.28 and 1.29 above shall, in principle, take effect from 1 July 2008.”

The recommendation to insert the new paragraph 30.139A is in Chapter 2 of the EOC and though it should, in principle, be read as an integral part of the main 2008 PRB Report, it is always subject to the relevant provisions on effective date. Mr Nursing, the representative of the PRB, deposed to the effect that the retention allowance recommended in paragraph 30.139A of the EOC was a new allowance for the Nurse Educator Cadre since they were not previously eligible for that allowance. He stressed on the fact that it was possible to have provisions which would apply only to some specific grades. Mr Nursing also stated that the word “equally” used in paragraph 30.139A (above) connotes the idea that the recommendation made would “also” apply to the Nursing Educator Cadre. It does not connote any backdating and if this was the intention of the PRB, this would have been expressly specified in the report. He was cross-examined on the use of the word “equally” and the appropriate effective date which should be adopted for recommendation 30.139A in the EOC.

The Tribunal has examined the evidence on record and the submissions of Counsel for the Respondents. It is clear from the main 2008 PRB Report that the cadre of Nurse Educator was not eligible for the retention allowance since paragraph 30.136 of the 2008 PRB Report (Volume II Part I) only refers to relevant officers in the Nursing Officer Cadre up to the level of Regional Nursing Administrator and incumbents in the Community Health Nursing Cadre as being then eligible to the retention allowance. The PRB then went on to recommend the retention allowance for the specific grades, as it was perfectly entitled to do, for the coming five years (as per paragraph 30.137). The PRB in the EOC then recommended the retention allowance for the Nurse Educator Cadre. As per the evidence, this was the first time that the Nurse Educator Cadre was eligible for this allowance. Obviously, if one of the Disputants was previously eligible for the retention allowance, it would not have been in his capacity as an incumbent of the Nurse Educator Cadre. He would have been entitled to the allowance as an incumbent of the relevant grade in the appropriate cadre as per paragraph 30.136 of the main 2008 PRB Report (above). For the Nursing Educator Cadre, the Tribunal agrees with the evidence adduced by Mr Nursing that the retention allowance was a newly introduced allowance. Paragraph 1.29 of the EOC is clear and the new retention allowance for the Nursing Educator Cadre is to take effect as from 1 July 2009.
The use of the word “equally” in paragraph 30.139A (above) cannot be of much help to the case of the Disputants. Mr Nursing who was deputed by the Director of the PRB and who was giving the stand of the PRB on the issue maintained that the word “equally” as used in paragraph 30.139A (above) connotes the idea that the retention allowance would “also” apply for the Nursing Educator Cadre. We have no doubt that this was indeed the intention of the PRB since it is most improbable that the PRB would by the mere use of the word “equally” intend that officers of the Nursing Educator Cadre should be eligible for the retention allowance with retroactive effect as from the year 2008 or in appropriate cases even before, that is, as from August 2005 when relevant officers of the Nursing Officer Cadre first became eligible for the retention allowance following the decision of the High Powered Committee. If the PRB intended to give retroactive effect to the retention allowance for the Nurse Educator Cadre, the PRB would have expressly provided for same in the EOC so that there would have been no need for extrapolation and deduction.

Also, even if the word “equally” was to connote the idea of equality between the grades of the cadres mentioned in paragraph 30.137 of the main 2008 PRB Report and the grades in the Nurse Educator Cadre in relation to the retention allowance, this would hold true subject to the effective date of the recommendation in paragraph 30.139A of the EOC. In the absence of any express provision that the Nurse Educator Cadre should not only be put onboard but also retroactively, the only reasonable conclusion is that following the recommendation in the EOC, the Nurse Educator Cadre shall be eligible to the same retention allowance as other grades in the Nursing Officer Cadre and Community Health Nursing Cadre but as from 1 July 2009 (as per paragraph 1.29 of the EOC) since no retention allowance was previously envisaged for the Nurse Educator Cadre. The Tribunal also takes note of the unchallenged evidence of Mr Nursing that it is possible to have some recommendations of the PRB Report which will apply only to some grades in the Nursing Group.

For all the reasons given above, the Tribunal finds that the recommendation for retention allowance in favour of the Disputants is effective as from 1 July 2009 as per paragraph 1.29 of the EOC. The disputes are thus set aside.

(SD)Indiren Sivaramen
Vice-President

(SD)Jean Paul Sarah
Member

(SD)Philippe Edward Blackburn
Member

(SD)Hurryjeet Sooreea
Member

9 December 2011