

CIVIL SERVICE ARBITRATION TRIBUNAL

AWARD

RN 915

Before:

Rashid HOSSEN	-	Ag. President
Said HOSSENBUX	-	Assessor
Philippe Noel JEANTOU	-	Assessor

In the matter of:

State Employees' Federation

and

- 1. Ministry of Agro-Industry and Fisheries**
- 2. Ministry of Civil Service and Administrative Reforms**
- 3. Public Service Commission**

This is a dispute referred by the above parties as advised by the Ministry of Civil Service and Administrative Reforms for arbitration by virtue of **Section 82 (1) (e) of the Industrial Relations Act 1973**, as amended:

The Terms of Reference read as follows:-

“Whether the amendment brought under item “Qualification” of the scheme of service for the post of Deputy Forest Ranger altering the mode of appointment from “promotion to selection” is in order.

Whether the immediate application of the amended scheme is fair, reasonable, proper and non prejudicial.”

The State Employees Federation is hereafter referred to as the Applicant and the Ministry of Agro-Industry and Fisheries, the Ministry of Civil Service and Administrative Reforms and the Public Service Commission as Respondent No. 1, 2 and 3 respectively.

We thought it apposite to reproduce the various averments contained in the parties' Statement of Case before examining their testimonial and documentary evidence. We believe such an exercise allows us to better identify the relevant issues.

In its Statement of Case, the Applicant avers:-

1. On the 22nd May 2003, Respondent No. 2 wrote to the Applicant asking for its comments and views on a series of alterations in schemes of service for the Forest Department which Respondent No. 2 was proposing to implement.
2. The post of Deputy Ranger was also included in the scheme of service and under the items qualifications for the abovementioned post, the mode of appointment proposed was:

“By promotion from the grade of forester on the basis of experience and merit, of officers from the grade of forester reckoning at least four years' service in a substantive capacity in the grade.”.
3. The previous scheme of service also provided for promotion on the basis of experience and merit from the grade of Forester for appointment in the said post.
4. By letter dated 28th June 2003, the Applicant replied to Respondent No. 2 to express its agreement to the proposed scheme of service, except for the number of years which the Applicant proposed to be deleted, being given that most officers in a specific grade are of the same age group.
5. Shortly afterwards Respondent No.2 unilaterally altered the mode of appointment for the post of Deputy Forest Ranger by replacing the mode of "promotion" by that of '**selection**' from the officers in the grade of forester reckoning at least 4 years experience in a substantive capacity in the grade. This unilateral alteration was made without any prior consultation with the

Applicant as is usually the established practice and it was implemented on the eve of promotion exercise in the post of Deputy Forest Ranger.

6. This alteration resulted in the non-appointment of the senior-most Forester, Mr Cassam Badal, reckoning more than 28 years experience in the post of Forester.
7. Despite representations made by the Applicant to cancel the exercise of appointment based on this altered scheme, the Respondent implemented the unilaterally altered scheme in the exercise of appointment in the post of Deputy Forest Ranger.
8. The issues are therefore:
 - (a) Whether the Respondent acted in breach of the legitimate expectations of the said Mr. Badal and in breach of the principle of rules of natural justice by altering the mode of appointment on the eve of the appointment exercise in the post of Deputy Forest Ranger;
 - (b) Whether the abrupt decision to change the scheme of service did not render purposeless any ongoing consultation process and is not in breach of the established practice of prior consultations with the Federation before implementing any new scheme of service.
 - (c) Whether the mode of appointment by 'selection' is not in breach of the recommendations of the PRB Report in that the Ministry is adopting a fragmented approach to the recommendations of the said report.
9. The PRB Report 2003 has indeed never made specific recommendations for the post of Deputy Forest Ranger, contrary to several other grades in other Ministries.
10. It is not challenged that general guidelines in the PRB Report laid down in paragraph 14.3.10 of the PRB Report 2003 (vol 1), recommend the possibility of introducing selection in certain posts. However paragraph 14.3.10 (d) of the

same report provides that: "the selection exercise, both for the middle and higher levels, should not necessarily be a competitive examination but should consist of an assessment of training received and experience, length of service, an oral examination, a performance test, a factor based on recorded service ratings, a factor based on formal in service training courses successfully completed, a written objective test or any combination thereof".

11. The Respondent whilst implementing the selection mode in the scheme of service has adopted a fragmented and erroneous application of the said report. Indeed no training has been dispensed and no assessment has been made with regards to any of the factors recommended in paragraph 14.3.10. The new scheme of service clearly contravenes the recommendations of the PRB Report, which should, if applied, be applied in toto.
12. Furthermore, the PRB Report 2003 states itself at paragraph 14.3.8 that "with a view to enable organizations to prepare and choose the right candidate for promotional position, recommendation is made to the fact that performance management should be introduced as soon as possible". No performance management has ever been introduced in the said cadre, and as such, the change in the mode of appointment, on the eve of a promotion exercise can only be termed to be a colourable device to deprive the senior most officer who reckons 28 years of service, of the post of Deputy Forest Ranger. The Applicant maintains therefore that in view of the above there has been a total disregard for the general interests of the service.
13. However, selection is not in itself a general rule and Applicant refers the Tribunal to the PRB Report page 489 Vol 2, which has itself recommended the basis of promotion for appointment in many posts of second in command: vivid examples are: the post of Assistant Registrar of Companies, for which, the mode of appointment specifically recommended by the PRB is by promotion from the post of Chief Companies Officer (PRB Report Vol 2 page 489) as well as that of Deputy Chief Electoral Officer, where there is a

specific recommendation of the PRB Report (PRB Report Vol 2 Page 39-40) for promotion from the post of Principal Electoral Officer.

14. The prescribed scheme of service for the post of Deputy Forest Ranger has been implemented by the Ministry without any due consultation process and in complete disregard of the consultation process which was ongoing. As such, the Ministry has departed from the established practice within the Civil Service of prior consultation process as regards the scheme of service.
15. The Applicant therefore prays the Tribunal to:
 - (i) declare to be null and void the altered scheme of service as being in breach of the legitimate expectations of the aggrieved party, the senior most officer, Mr Badal;
 - (ii) declare to be null and void the altered scheme of service which has been implemented without the due consultation process, in violation of the established practice; and
 - (iii) declare that the alteration has been done in a fragmented way and has misconceived the recommendations of the PRB Report.

In its Statement of Case, Respondent No 1 avers:-

1. Respondent No.1 is not aware of paragraph 1 of the statement of case of the Applicant.
2. Respondent No.1 denies paragraph 2 of the statement of case of the Applicant and avers that on the 23rd October 2001 it proposed that the scheme of service be amended under the item "Qualifications" as follows:

"By promotion on the basis of experience and merit of officers in the grade of Forester reckoning at least four years service in a substantive capacity in the grade".

3. Respondent No.1 denies paragraph 3 of the statement of case of the Applicant and avers that in the previous scheme of service dated 23rd April 1976, the item "Qualifications" read as follows:-

“By promotion from the grade of Forester on the basis of experience and merit”.
4. Respondent No.1 is not aware of paragraph 4 of the statement of case of the Applicant.
5. Respondent No.1 denies paragraph 5 of the statement of case of the Applicant and avers as follows:
 - (i) On the 3rd August 2004, Respondent No.2 informed Respondent No.1 that the Public Service Commission had proposed an amendment under item "Qualifications" of the scheme of service to read as follows-

"By selection from among officers in the grade of Forester reckoning at least four years' service in a substantive capacity in the grade".

and,
Respondent No.2 had requested Respondent No.1 to submit its comments on the proposed amendment.
 - (ii) Respondent No.1 raised no objection as it was in line with the promotion procedures for grade to grade promotion according to Recommendation 14.3.10(e) of the PRB Report 2003 wherein it is stipulated that in a cadre of four levels or more, selection could be made for the first and third levels or for the second and fourth levels.
 - (iii) Respondent No.1 further avers that the post of Deputy Forest Ranger is at the third level in the cadre consisting of the following grades:-
 - (a) Divisional Forest Assistant
 - (b) Forest Ranger
 - (c) Deputy Forest Ranger
 - (d) Forester
 - (e) Forest Guard
 - (iv) On 17.9.04 Respondent No.2 was informed of the stand of Respondent No.1 as per (ii) and (iii) above.
6. Save and except that Mr. Cassam Badal was not appointed, Respondent No.1 denies paragraph 6 of the statement of case of the Applicant and avers that Mr. Cassam Badal who has been appointed Forester since 18th September

1984 reckons more than 21 years experience in the grade. Respondent No.1 further avers that Mr. Badal was convened for an interview by the Public Service Commission in July 2005.

7. Respondent No.1 denies paragraph 7 of the statement of case of the Applicant and avers as follows:

- (i) The scheme of service of Deputy Forest Ranger was prescribed on 29th September 2004.
- (ii) One vacancy which had occurred on 12.8.04 in the grade of Deputy Forest Ranger was reported to the Public Service Commission on 29th March 2005 and it was advertised on the 30th May 2005.
- (iii) Interviews were held by the Public Service Commission on 18th and 19th July 2005.
- (iv) It was only on 5th August 2005 that the State Employees Federation raised objection to the selection exercise i.e. nearly one year of the date of prescription of the scheme of service and made a request for its cancellation.
- (v) On the 6th September 2005 the Public Service Commission sought the views of Respondent No.1 on the objection raised by the State Employees Federation and whether recommendation to fill vacancy by selection should be maintained.
- (vi) On 20th September 2005, a reply was made to the Public Service Commission maintaining the recommendation of Respondent No.1 that the post of Deputy Forest Ranger be filled by selection.
- (vii) Further interviews were carried out on the 24th and 25th October 2005 by the Public Service Commission.
- (viii) On the 28th October 2005 the Public Service Commission submitted the name of Mr. Chandra Ramful, Forester to be appointed Deputy Forest Ranger on a temporary basis.
- (ix) After having sought legal advice, Mr. C. Ramful ranking 26th in the grade of Forester had been appointed Deputy Forest Ranger with effect from 14th November 2005 on a temporary basis for a period of six months.

8. Respondent No.1 denies paragraph 8 of the statement of case of the

Applicant and avers that it acted in accordance with the recommendation 14.3.10(e) of PRB Report 2003. Respondent No.1 further avers that the procedures to amend the scheme of service had started well before the vacancy which occurred on the 12th August 2004 and that the element of "selection" is in fact recommended at paragraph 14.3.10(e) and it has implemented same.

9. Respondent No.1 denies paragraph 9 of the statement of case of the Applicant and avers that no specific recommendation has been made for the post of Deputy Forest Ranger but PRB recommended at paragraph 14.3.10(e) of its report the promotion framework as a guideline for determining the promotion procedure.
10. Respondent No.1 denies paragraph 10 and avers that the word "could" instead of "should" has been used at paragraph 14.3.10 (d) of the PRB Report, namely". . . but could consist of an assessment of training received. . ."
11. Respondent No.1 denies paragraphs 11, 12, 13 and 14 of the statement of case of the Applicant and avers that at paragraph 14.3.6 of the 2003 Report, the PRB has observed that for jobs at the middle level, where some decision-making ability, leadership qualities and skills on the job are required, seniority alone cannot be depended upon for the post. In such cases, along with seniority, merit must also receive due attention.
12. Respondent No.1 further avers that at paragraph 14.3.8 of the PRB Report, the PRB holds the view that each case would have to be examined on its own merit depending upon a series of factors ranging from the level at which the promotion is being made, the job specifications and profile, the availability of persons, the establishment size etc..
13. Respondent No.1 therefore moves that the statement of case of the Applicant be set aside.

Respondent No 2 on the other hand avers:

1. Respondent No.2 admits paragraph 1 of the statement of case of the Applicant.
2. Respondent No.2 takes note of paragraphs 2 and 3 of the statement of case of the Applicant.
3. Respondent No.2 admits paragraph 4 of the statement of case of the Applicant.
4. Respondent No.2 denies paragraph 5 of the statement of case of the Applicant and avers as follows:
 - (i) The proposed scheme of service for the post of Deputy Forest Ranger, i.e. for the post to be filled by way of promotion, was forwarded on the 16th February 2004 to the Public Service Commission for consideration and agreement after appropriate consultations.
 - (ii) On 26th July 2004, the Public Service Commission informed Respondent No.2 that the mode of appointment to the post had been amended and that it would be by 'selection'.
 - (iii) Respondent No.1 which was consulted concurred with the amendment proposed by the Public Service Commission.
 - (iv) The scheme of service for the post of Deputy Forest Ranger was therefore prescribed in its official form on the 29th September 2004.
 - (v) A copy of the prescribed scheme of service was forwarded to the State Employees Federation on the 29th September 2004 and there had been no reaction from the State Employees Federation.
5. Respondent No.2 denies paragraph 6 of the statement of case of the Applicant and avers that appointment and promotion fall under the purview of the Public Service Commission.
6. Respondent No.2 denies paragraph 7 of the statement of case of the Applicant and avers that it was only on the 5th August 2005 that the Applicant raised objection to the scheme of service for the post i.e. after a selection exercise was carried out by the Public Service Commission on the 18th and 19th July 2005 and that the Applicant also requested that the selection exercise be stopped.

7. Respondent No.2 further avers that on the 25th August 2005 the views of the Respondent No.1 were sought on the request of the Federation and that on the 16th September 2005, the Respondent No.1 informed that it maintained that the post of Deputy Forest Ranger should be filled by selection.
8. Respondent No.2 denies paragraphs 8 and 9 of the statement of case of the Applicant and avers the following:
 - (i) At a meeting held on the 13th October 2005 under the chairmanship of the Respondent No.2 with representatives of the State Employees Federation, justifications were given to the latter as to why the mode of appointment to the post of Deputy Forest Ranger was by 'selection', namely:
 - (a) to be in line with the general guidelines laid down at paragraph 14.3.10 of the PRB Report 2003 regarding the promotion procedure for grade to grade promotion, in particular to section (e) of paragraph 14.3.10 wherein it is stipulated that in a cadre of four levels or more, selection could be made for the first and third levels or for the second and fourth levels.
 - (b) the amendment brought by the Commission, i.e. the post to be filled by selection, was in line with the promotion procedure adopted for comparable grades in other cadres, namely in the Finance Cadre, Personnel Cadre, Purchasing and Supply Cadre etc.
9. Respondent No.2 takes note of paragraph 10 of the statement of case of the Applicant and avers that the mode of selection in respect of appointment is determined by the Public Service Commission.
10. Respondent No.2 is not aware of paragraphs 11 and 12 of the statement of case of the Applicant.

11. Respondent No.2 denies paragraph 13 of the statement of case of the Applicant and avers that all the steps for the prescription of the scheme of service in accordance with the Personnel Management Manual had been followed. Respondent No.2 further avers that it was not the practice to consult the Federations on any amendments brought by the Public Service Commission.
12. Respondent No.2 therefore moves that the statement of case of the Applicant be set aside.

In its Statement of Case, Respondent No. 3 avers:-

1. Respondent No. 3 takes note of paragraph 1 of Applicant's Statement of Case.
2. Respondent No. 3 takes note of paragraph 2 of Applicant's Statement of Case.
3. As regards paragraph 3 of Applicant's Statement of Case, Respondent No. 3 avers that according to the previous Scheme of Service prescribed on 23.04.1976, the post of Deputy Forest Ranger was filled by promotion from the grade of Forester on the basis of experience and merit.
4. Respondent No. 3 takes note of paragraph 4 of Applicant's Statement of Case.
5. As regards paragraph 5 of Applicant's Statement of Case, Respondent No. 3 avers as follows:-
 - (a) On the 16.02.2004, Respondent No. 2 submitted to the Commission, for consideration and agreement, proposed Schemes of Service for the posts of Forester, Deputy Forest Ranger and Forest Ranger.
 - (b) Respondent No. 3 was informed by Respondent No. 2 that under item "Qualifications" for the post of Deputy Forest Ranger:-
 - (i) a period of four years' service in the grade of Forester had been included to ensure that officers in this grade had acquired the necessary experience to perform higher duties; and
 - (ii) the "note" in the existing scheme of service had been deleted as it was no more relevant,

and that the duties of the proposed Scheme of Service had been updated to reflect the actual requirements of the job;

- (c) Respondent No. 3 was further informed by Respondent No. 2 that the two Federations had been consulted on the proposed Scheme of Service. The Federation of Civil Service and other Unions had not replied. However, the State Employees Federation had asked that, for the posts of Deputy Forest Ranger and Forest Ranger, the requirements of a period of four years' service and two years' service required respectively for promotion, be deleted being given that most of the officers in each of the grades of Forester and Deputy Forest Ranger were of the same age group and, as such, it might happen that as and when vacancies occur, the officers might not reckon the required years of service in the specific grade;
 - (d) The Ministry of Agriculture, Food Technology and Natural Resources was not agreeable to the proposal of the State Employees Federation and had informed that 30 out of 40 Foresters in post already reckoned the four years' service for promotion as Deputy Forest Ranger while 8 out of the 10 Deputy Forest Rangers in post reckoned the two years' service for promotion as Forest Ranger;
 - (e) On the 12.07.2004 – the Commission approved Respondent No. 2's proposal with an amendment i.e. by deleting under item "Qualifications" the word "promotion" and replacing it by "selection" to be in line with paragraph 14.3.10 (e) of the PRB 2003 Report.
 - (f) On the 26.07.2004, the Commission informed Respondent No. 2 that it had amended the proposed Scheme of Service for the post of Deputy Forest Ranger and decided that, **if the latter agreed** to the amendments, the Scheme of Service in the amended form should be specified as the official one approved by the Commission for the post.
 - (g) The proposed amendments were agreed upon by Respondent No. 2 and the Scheme of Service for the post of Deputy Forest Ranger was accordingly prescribed on 29 September 2004.
6. As regards paragraphs 6 and 7 of Applicant's Statement of Case, Respondent No. 3 avers that:-

- (a) On the 30.03.2005, the Senior Chief Executive, Ministry of Agriculture, Food Technology and Natural Resources reported one vacancy in the grade of Deputy Forest Ranger w.e.f. 12.08.2004 following the promotion of Mr D. Ramsohok as Forest Ranger and recommended that the vacancy be filled by way of advertisement;
 - (b) The post was advertised to qualified serving officers in the Ministry of Agriculture, Food Technology and Natural Resources thro PSC Circular Note No. 24 of 2005 dated 30.05.2005;
 - (c) 29 applications for the post were received by the Commission and all 29 candidates were interviewed on 18 and 19 July 2005, among whom was Mr Cassam Badal;
 - (d) On the 05.08.2005, the State Employees' Federation by way of letter, submitted a request for the cancellation of the promotion exercise for the post of Deputy Forest Ranger to the Ministry of Civil Service Affairs and Administrative Reforms with copy to the Commission.
 - (e) As the selection exercise was not yet completed, the Commission, on the 06.09.2005, sought the views of the Ministry of Agro Industry and Fisheries on the representation from the State Employees' Federation.
 - (f) On the 20.09.2005, the Commission was informed by the Ministry that it was maintaining its previous recommendation for the filing of the vacancy in the grade of Deputy Forest Ranger.
 - (g) In view of the fact that the initial selection was not yet completed and a new Commission was appointed, the 29 applicants were once again called for interview on the 24 and 25 October 2005 for a selection exercise.
 - (h) On the 28.10.2005, the Commission decided that Mr Chandra Ramful, Forester be appointed Deputy Forest Ranger on a temporary basis.
7. Respondent No. 3 takes note of paragraphs 8 and 9 of Applicant's Statement of Case.
8. Respondent No. 3 takes note of paragraph 10 of Applicant's Statement of Case.
9. Respondent No. 3 takes note of paragraph 11 of Applicant's Statement of Case.

10. Respondent No. 3 takes note of paragraph 12 of Applicant's Statement of Case.
11. Respondent No. 3 takes note of paragraph 13 of Applicant's Statement of Case.
12. Respondent No. 2 moves that the application be set aside.

In an amended reply, Respondent No 1 avers:

1. Respondent No.1 is not aware of paragraph 1 of the statement of case of the Applicant.
2. Respondent No.1 admits paragraph 2 of the statement of case of the Applicant and avers that on the 23rd October 2001 it proposed that the scheme of service be amended under the item "Qualifications" as follows:

"By promotion on the basis of experience and merit of officers in the grade of Forester reckoning at least four years service in a substantive capacity in the grade".

3. Respondent No.1 admits paragraph 3 of the statement of case of the Applicant and avers that in the previous scheme of service dated 23rd April 1976, the item "Qualifications" read as follows"

"By promotion from the grade of Forester on the basis of experience and merit".

4. Respondent No. 1 is not aware of paragraph 4 of the statement of case of the Applicant.
5. Respondent No. 1 denies paragraph 5 of the statement of case of the Applicant and avers as follows:

(i) On the 3rd August 2004, Respondent No.2 informed Respondent No.1 that the Public Service Commission had made an amendment under item

"Qualifications" of the scheme of service to read as follows:-

"By selection from among officers in the grade of Forester reckoning at least four years' service in a substantive capacity in the grade" and, Respondent No.2 had requested Respondent No.1 to submit its comments on the amended scheme of service.

- (ii) Respondent No.1 raised no objection as it was in line with the promotion procedures for grade to grade promotion according to Recommendation 14.3.10 (e) of the PRB Report 2003 wherein it is stipulated that in a cadre of four levels or more, selection could be made for the first and third levels or for the second and fourth levels.
- (iii) Respondent No.1 further avers that the post of Deputy Forest Ranger is at the third level in the cadre consisting of the following grades:

- (a) Divisional Forest Assistant
- (b) Forest Ranger
- (c) Deputy Forest Ranger
- (d) Forester
- (e) Forest Guard

- (iv) On 17.9.04 Respondent No.2 was informed of the stand of Respondent No.1 as per (ii) and (iii) above.

6. Save and except that Mr. Cassam Badal was not appointed, Respondent No.1 denies paragraph 6 of the statement of case of the Applicant and avers that Mr. Cassam Badal who has been appointed Forester since 18th September 1984 reckons more than 21 years experience in the grade. Respondent No.1 further avers that Mr. Badal was convened for an interview by the Public Service Commission in July 2005.

7. Respondent No.1 denies paragraph 7 of the statement of case of the Applicant and avers as follows:

- (i) The scheme of service of Deputy Forest Ranger was prescribed on 29th September 2004.
- (ii) One vacancy which had occurred on 12.8.04 in the grade of Deputy Forest Ranger was reported to the Public Service Commission on 29th March 2005 and it was advertised on the 30th May 2005.

- (iii) Interviews were held by the Public Service Commission on 18th and 19th July 2005.
 - (iv) It was only on 5th August 2005 that the State Employees Federation raised objection to the selection exercise i.e. nearly one year of the date of prescription of the scheme of service and made a request for its cancellation.
 - (v) On the 6th September 2005 the Public Service Commission sought the views of Respondent No.1 on the objection raised by the State Employees Federation and whether recommendation to fill vacancy by selection should be maintained.
 - (vi) On 20th September 2005, a reply was made to the Public Service Commission maintaining the recommendation of Respondent No.1 that the post of Deputy Forest Ranger be filled by selection.
 - (vii) Further interviews were carried out on the 24th and 25th October 2005 by the Public Service Commission.
 - (viii) On the 28th October 2005 the Public Service Commission submitted the name of Mr. Chandra Ramful, Forester to be appointed Deputy Forest Ranger on a temporary basis.
 - (ix) After having sought legal advice, Mr. C. Ramful ranking 26th in the grade of Forester had been appointed Deputy Forest Ranger with effect from 14th November 2005 on a temporary basis for a period of six months.
8. Respondent No.1 denies paragraph 8 of the statement of case of the Applicant and avers that it acted in accordance with the recommendation 14.3.10(e) of PRB Report 2003. Respondent No.1 further avers that the procedures to amend the scheme of service had started well before the

vacancy which occurred on the 12th August 2004 and that the element of "selection" is in fact recommended at paragraph 14.3.10 (e) and it has implemented same.

9. Respondent No.1 admits paragraph 9 of the statement of case of the Applicant and avers that no specific recommendation has been made for the post of Deputy Forest Ranger but PRB recommended at paragraph 14.3.10 (e) of its report the promotion framework as a guideline for determining the promotion procedure.
10. Respondent No.1 denies paragraph 10 and avers that the word "could" instead of "should" has been used at paragraph 14.3.10 (d) of the PRB Report, namely"... but **could** consist of an assessment of training received..”
11. Respondent No.1 denies paragraphs 11, 12, 13 and 14 of the statement of case of the Applicant and avers that at paragraph 14.3.6 of the 2003 Report, the PRB has observed that for jobs at the middle level, where some decision-making ability, leadership qualities and skills on the job are required, seniority alone cannot be depended up for the post. In such cases, along with seniority, merit must also receive due attention.
12. Respondent No.1 further avers that at paragraph 14.3.8 of the PRB Report, the PRB holds the view that each case would have to be examined on its own merit depending upon a series of factors ranging from the level at which the promotion is being made, the job specifications and profile, the availability of persons, the establishment size etc..
13. Respondent No.1 therefore moves that the statement of case of the Applicant be set aside.

In an amended reply Respondent No 2 avers:

1. Respondent No.2 admits paragraph 1 of the statement of case of the

Applicant.

- 2 Respondent No.2 takes note of paragraphs 2 and 3 of the statement of case of the Applicant.
3. Respondent No.2 admits paragraph 4 of the statement of case of the Applicant. \
4. Respondent No.2 denies paragraph 5 of the statement of case of the Applicant and avers as follows:
 - (i) The proposed scheme of service for the post of Deputy Forest Ranger, i.e. for the post to be filled by way of promotion, was forwarded on the 16th February 2004 to the Public Service Commission for consideration and agreement after appropriate consultations.
 - (ii) On 26th July 2004, the Public Service Commission informed Respondent No.2 that the mode of appointment to the post had been amended and that it would be by 'selection'.
 - (iii) Respondent No.1 which was consulted concurred with the amendment made by the Public Service Commission.
 - (iv) The scheme of service for the post of Deputy Forest Ranger was therefore prescribed in its official form on the 29th September 2004.
 - (v) A copy of the prescribed scheme of service was forwarded to the State Employees Federation on the 29th September 2004 and there had been no reaction from the State Employees Federation.
5. Respondent No.2 denies paragraph 6 of the statement of case of the Applicant and avers that appointment and promotion fall under the purview of the Public Service Commission.
6. Respondent No.2 denies paragraph 7 of the statement of case of the Applicant and avers that it was only on the 5th August 2005 that the Applicant raised objection to the scheme of service for the post i.e. after

interviews were carried out by the Public Service Commission on the 18th and 19th July 2005 and that the Applicant also requested that the selection exercise be stopped.

7. Respondent No.2 further avers that on the 25th August 2005 the views of the Respondent No.1 were sought on the request of the Federation and that on the 16th September 2005, the Respondent No.1 informed that it maintained that the post of Deputy Forest Ranger should be filled by selection.
8. Respondent No.2 denies paragraphs 5 and 9 of the statement of case of the Applicant and avers the following:-
 - (i) At a meeting held on the 13th October 2005 under the chairmanship of the Respondent No.2 with representatives of the State Employees Federation, justifications were given to the latter as to why the mode of appointment to the post of Deputy Forest Ranger was by "Selection", namely:
 - (a) to be in line with the general guidelines laid down at paragraph 14.3.10 of the PRB Report 2003 regarding the promotion procedure for grade to grade promotion, in particular to section (e) of paragraph 14.3.10 wherein it is stipulated that in a cadre of four levels or more, selection could be made for the first and third levels or for the second and fourth levels.
 - (b) the amendment brought by the Commission, i.e. the post to be filled by selection, was in line with the promotion procedure adopted for comparable grades in other cadres, namely in the Finance Cadre, Personnel Cadre, Purchasing and Supply Cadre etc.
9. Respondent No.2 takes note of paragraph 10 of the statement of case of the Applicant and avers that the mode of selection in respect of appointment is determined by the Public Service Commission.

10. Respondent No.2 is not aware of paragraphs 11 and 12 of the statement of case of the Applicant.
11. Respondent No.2 denies paragraph 13 of the statement of case of the Applicant and avers that all the steps for the prescription of the scheme of service in accordance with the Personnel Management Manual had been followed.
Respondent No.2 further avers that it was not the practice to consult the Federations on any amendments brought by the Public Service Commission.
12. Respondent No.2 therefore moves that the statement of case of the Applicant be set aside.

In reply to Respondents' Statement of Case the Applicant further avers:

1. Applicant records the admissions of Respondent No 2 to paragraphs 1 & 4 of its statement of case and records paragraph 2 of Respondent's No 2 reply. Applicant maintains with regards to Respondent No 1, the contents of paragraph 1 of its statement of case and notes the stand of Respondent No 1 regarding the contents of paragraph 2 of Applicant's statement of case.
2. Applicant notes that Respondent No 1 has in paragraph 3 of its Reply simply reiterated the contents of paragraph 3 of Applicant's Statement of case, as regards the previous mode of appointment in the post of Deputy Forest Ranger.
3. Applicant maintains all the averments contained in paragraph 4 of its statement of case.
4. Applicant is not aware of the averments of paragraph 5 of Respondent's No 1 statement of case, save and except that Applicant denies that the selection mode for appointment is in line with the recommendations of the PRB Report 2003. .
5. Applicant takes notes of paragraph 5 of Respondent's No 2 statement of case.

Applicant further avers that Respondent No 2 confirms in its reply (paragraph 4) that the scheme of service had already been prescribed in its official form on the 29th September 2004, when Respondent No 2 allegedly consulted Applicant anew on the 29th September 2004, thus being in breach of the established procedures. Applicant further avers that it strongly protested to the prescribed scheme of service by letter dated 5th August 2005 as soon as it became aware of the new prescribed scheme of appointment. When Respondent No.2 informed Respondent No.1 that the PSC had proposed an amendment under item "Qualifications" of the scheme of service to be read as follows: by Selection, the Federation should have been consulted for its views once again by the Respondent, before the effective prescription of the scheme.

6. Applicant maintains the averments contained in paragraph 6 of its statement of case.
7. Applicant denies paragraph 7 of Respondent's No 1 reply and paragraph 7 of Respondent's No 2 statement of case. Applicant thus maintains that its views were never sought about the altered scheme of service based on the selection mode and that Respondents unilaterally went ahead with the implementation of the scheme and the appointment of one Chandra Ramphul despite the industrial dispute which had been declared.
8. Applicant denies the averments contained in paragraphs 8 & 9 of Respondent's No 1 reply, save and except that Applicant takes note that Respondent No 1 admits that no specific recommendations have been made for the post of Deputy Forest Ranger in the PRB Report. Applicant maintains all the averments contained in 8 & 9 of its statement of case.
9. In reply to paragraph 8 of Respondent's No 2 reply, Applicant maintains paragraph 8 above and avers that in the meeting held on the 13th October 2005, Applicant made it clear, notwithstanding the justifications of Respondent No 2 that it was not agreeable to the implementation of the new prescribed scheme and that an industrial dispute had been declared in relation to same.
10. Applicant records paragraph 9 of Respondent's No 2 reply and in reply to paragraph

10 of the reply, Applicant maintains the averments contained in paragraphs 10, 11 & 12 of its statement of case.

11. Applicant denies paragraph 10 of Respondent's No 1 reply, save and except that it admits that the word 'could' has been used. Applicant further avers that para 14.3.10 (d) of the PRB Report 2003 clearly states that "the selection exercise, both for middle and higher levels, should not necessarily be a competitive examination but could consist of an assessment of training received and experience; length of service; an oral examination; a performance test; a factor based on recorded service ratings; a factor based on formal in-service training courses successfully completed; a written objective test; or any combination thereof", such that by implication some form of selection exercise through training or examination is prescribed, and this has not been complied with in the present case.

12. Applicant denies paragraphs 11 & 12 of Respondent's No 1 reply and paragraphs 10 & 11 of Respondent's No 2 reply and maintains the averments contained in paragraphs 11 to 14 of its statement of case. Applicant further avers that the amendments have been introduced in breach of the practice of prior consultation with the Federation.

We therefore note that most of the facts are actually undisputed. The only bone of contention that remains is with regard to the second amendment made presumably by the Public Service Commission and which amendment had not been effected in consultation with the Union.

Mr Poonit Ramjug, the Applicant's representative, stated under oath that at the time of the dispute the Officer who was acting as Deputy Forest Ranger and who was Forester was Mr Cassam Badal and representations were made amongst others by Mr Badal. The dispute is with regard to appointment from the post of Forest Rangers to Deputy Forest Ranger. The witness maintained the contents of the Statement of Case and moved that the requirements as published for the promotion post be declared null and void for want of consultation. According to him, it is the required practice in cases of amendments of scheme of service that unions be consulted. When their union was consulted, there was promotion mentioned with an addition of four years of Service from the grade of Foresters. The union was consulted on

that issue and the latter protested that the clause of four years service be removed as it is normally promotional and if no adverse report is received on the officer who is there on an actingship, there should not be any problem regarding his appointment. What took place was that the scheme of service was later officialised with the mention of selection and the requirement of four years of service. This was done without further consultation with the union.

Mr Cassam Badal testified to the effect that the dispute arose regarding the mode of appointment. He was a Forester but acting as Deputy Forester. He referred us to the relevant PRB Report which speaks of jobs at higher level such as first in command or second in command, where appointment should be made by selection from suitable and qualified candidates at the appropriate levels from the same cadre or from another cadre that has branched out from the main cadre. But since his job is not that of a higher level, the issue of selection should not have become applicable and if the union was allowed to make representations regarding the second amendment, he would have referred the union to that particular paragraph. He was called for interview but was not appointed.

Respondent No 1's only representative, Mrs Devi Deerpalsing, Senior Personnel Officer at the Ministry of Agro-Industry and Fisheries testified to the effect that since 23rd October 2001 it was proposed by Respondent No 1 that there would be alterations in the scheme of service for the post of Deputy Forest Ranger. The amendment would be under the item "qualification" and it would be by promotion on the basis of experience and merit of officers in the grade of Forester reckoning at least four years service in a substantive capacity. Consultations were held with the Staff Association and the latter agreed to the proposal by promotion. The proposed scheme of service was submitted to the Ministry of Civil Service Affairs. According to an established procedure, there is no further consultation after the decision of the PSC has been received at the level of the Ministry of Civil Service Affairs. The PSC made an amendment to the proposed scheme of service and being given that such amendment was in line with the PRB recommendation Respondent No 1 raised no objection. In this present case of Deputy Forest Ranger there is a first level Forest Guard and then comes the Forester which is the second level where the post is filled by promotion and Deputy Forest Ranger is at the third level and it is a supervisory grade since the officer is responsible to

control the work and supervise the labour force in the forest range. The witness confirmed that vacancy in the grade of Deputy Forest Ranger occurred on the 12th of August 2004 before the scheme of service was prescribed. It was reported on 20th March 2005 and advertised on 30th May 2005. After the advertisement the PSC carried out an interview in the month of July 2005. On 5th August 2005 Respondent No 1 received a copy of letter addressed by the State Employees Federation to the responsible officer at the Ministry of Civil Service Affairs raising an objection to the selection exercise i.e. one year after. Respondent No 2 sought the views of Respondent No 1 on this issue and the latter replied that all amendments were made in line with the PRB and recommended that the selection exercise be proceeded with.

Mrs Deerpalsing conceded in cross-examination that whether a proposed amendment on a scheme of service is in line with PRB or not, it should reach the Staff Association. She also conceded that there was no agreement with the Union on the first proposal itself. She further agreed that the provision for selection as opposed to promotion is a very important amendment and added that the prescribed scheme of service was forwarded to the Applicant on the 29th September 2004 and there had been no reaction from the Applicant until the 5th August 2005.

In re-examination she maintained that it was a decision of the Public Service Commission to amend the scheme of service from promotion to selection and according to the procedures prescribed in the Personnel Management Manual there was no need for consultation with the Applicant.

Respondent No 2's representative, Mrs Prabha Beehary, Chief Personnel Officer at the Ministry of Civil Service deponed to the effect that when the Ministry of Civil Service submits proposal for a scheme of service, the Ministry analyses the proposals to see whether they are in line with regulations and recommendation in the PRB. Once the Staff Associations are agreeable to the proposals, the matter is referred back to the Ministry of Civil Service and after further consultation with the unions, the matter is referred to the Public Service Commission for consideration and agreement. The final decision for a scheme of service becomes official once approved by the Public Service Commission. The latter has the right to amend the scheme of service. In the present case, the Respondent No 2 submitted the

proposal for promotion with the four years experience and it was the Commission that amended the scheme of service for appointment to be by selection. It is not a proposal that came from Respondent No 2. The witness has produced a document to that effect i.e. document "A". On reception of the scheme of service from the Public Service Commission Respondent No 2 communicated that decision of the Public Service Commission to Respondent No 1. According to Respondent No 2, Respondent No 1 had no objection as it was in line with the PRB's recommendation. The applicant only reacted in August 2005 i.e. after interviews were held by the Public Service Commission in July. The witness further added that it is not the practice to consult the union after any amendment brought by the Public Service Commission had been made.

We also heard the representative of the Public Service Commission, Mrs Bhamia Nundloll. She confirmed the averments contained in Respondent No 3's Statement of Case.

Again we find that the disputed issue is with regard to the second amendment effected by the Public Service Commission without consulting the Union.

In her submission Counsel appearing for Respondent No 1 and 2 drew our attention to the contents of the terms of reference which contained the two limbs. The first one is an invitation to declare whether the altering of the mode of appointment is in order and secondly whether its immediate application is fair and reasonable. It is clear that under the first limb the Applicant is challenging the decision of Respondent No 1 and 2 to alter the scheme of service. It is not for the Tribunal or the Supreme Court in that matter to substitute themselves for Ministries and give instructions as to how to run those Ministries. An application to make a declaration with respect to a scheme of service amounts to challenging the decision making process under the first limb and this should have been done by way of judicial review before the Supreme Court. Even if the manner in which the scheme of service was changed is challenged, the Tribunal is still not a proper forum. Counsel submitted there is no rule that prevents an appropriate authority from altering the scheme of service to provide for different qualifications. On the assumption that the Tribunal can interfere, it is the contention of the Respondents that they have applied the procedure as per their Personnel Management Manual. She submitted that it is clear that there was consultation with both the Staff Association and

the Federation and after the Public Service Commission decided to amend that scheme of service, there was no need for further consultation with the Staff Association or the Federation and this is in accordance with the Personnel Management Manual. It may appear that the Staff Association and the Federation were not consulted but the procedure is clearly laid down in the Personnel Management Manual and it does not provide further consultation after the decision of the Public Service Commission. With regard to the second limb of the terms of reference i.e. whether the immediate application of the amended scheme of service is fair, reasonable, proper and non-prejudicial. Counsel submitted that the scheme of service was prescribed on the 29th September 2004 and the Federation was informed that that scheme of service was amended and that it was prescribed and there was no reaction on its part. The union reacted only one year after interviews were being held in July. There is therefore no question of immediate application of the amended scheme of service. The scheme of service was not applied as soon as it was amended and prescribed in September 2004.

Counsel for Respondent No 3 initially chose not to address the Tribunal. Upon him being invited to do so Mr Ahmine submitted that it is not for the Public Service Commission to consult the union. It is not the function of the Public Service Commission but rather for the Ministry to do so. He referred us to a letter dated 20th September 2005 emanating from Respondent No 1 where it is clearly said that the scheme be amended to replace promotion and that the Ministry subscribed to the recommendation of the Commission. The document further states that the scheme of service was prescribed in September 2004 and no objection was raised by the Federation. It is only now after a year that the Federation is making representations and the selection exercise when the filling of one post is being carried out. The union is saying that there has been prejudice since they have not been consulted. Even if they had been consulted and did not agree to another amendment proposed, the Public Service Commission may still have decided to come by way of selection since it is entitled to do so. The only remedy available to the union would be to challenge by way of a judicial review before the Supreme Court.

In a lengthy address to the Tribunal, Mr A. Daby drew our attention on certain aspects of this matter, the relevant part of which can be summarized as follows:-

- The basis of the dispute is the alteration of the word selection and replacing for promotion. This was not done in consultation with the union as it ought to have been as per the requirements of the Personnel Management Manual. There was only partial consultation. The new scheme of service is wrong in law because it does not follow the procedure. It has created disruption and defeats the purpose of the Industrial Relations Act. Promotion is one thing and selection another. Counsel further submitted that the rules for the sake to legal order should be revisited. The Applicant is before the Tribunal not to seek for an appointment but to invite the employer to apply rules fairly.

Tribunal's Considerations

After going through the various Statements of Case and the testimonial and documentary evidence, we wish to address the following issues which we consider relevant to the present matter:-

- (a) **Declaratory Pronouncement**
- (b) **Prejudice**
- (c) **Late Protest**

(a) Declaratory Pronouncement

It is clear to us judging on the tenor of the terms of reference that what the Applicant is seeking is in fact a declaratory judgment which in the normal course of things should have been by way of judicial review before the Supreme Court. The Applicant is asking us to declare whether an act done by the executive is in order or not. This is a matter referred to us by the parties as advised by the Ministry of Civil Service Affairs and Administrative Reforms by virtue of **Section 82 (1) (e)** of the Industrial Relations Act of 1973 as amended and which provides that where an industrial dispute has been reported to the Minister, the latter may among other things with a view to promoting a settlement of the dispute refer the parties to the Commission for consultation. The terms of reference before us are in fact agreed terms of reference by both parties. In other words their contents are not disputed. There is nothing more that the union is asking than a declaration, i.e. to make a declaration regarding an act done by the executive. We find it apposite to refer to **S. Hurry v. Government of Mauritius** SCJ 51 of 1996 where the Court held the following:-

“It stands to reason therefore, that the duty to prepare schemes of service rests on the responsible officer but that these must obtain

the sanction of the Head of the Civil Service and agreed to by the Public Service Commission (Reg. 15). The application cannot succeed as one of the main parties is not before us: see *Heeraman v. Local Government Service Commission* [1991SCJ 188]. But even on the merits of the application, leave should not be granted. It is not for this Court to substitute itself for Ministries and tell them how to run their departments. The Court can only intervene when there has been a departure from established legal rules and procedures, but it is certainly not the function of the Court to direct Ministries or government departments how schemes of service should be prepared or amended to suit the changing needs of society. In *Heeraman v. Local Government Service Commission* (supra), the Court made the following observations:

“We know of no rule which prevents an appropriate authority from altering a scheme of service to provide for different qualifications. Indeed learned Counsel for the applicant conceded that he could only press his point if we assume that the alteration was made overnight.”

In **Planche** v. (1) Conservatoire de Musique François Mitterrand Trust Fund ; (2) The Permanent Secretary, Ministry of Education and Science [1994 SCJ 129], the Court held that it could not, on an application for **judicial review**, substitute its own views on schemes of service.

The application is therefore set aside.”

What we find therefore is that judicial bodies will not interfere with executive’s decisions unless and until the principles of natural justice are being clearly offended. The purpose of the Industrial Relations Act as amended is to maintain good industrial relations. Our wide powers given under the Act should not go as far as interfering with executive decisions unless such cause is justified.

(b) Prejudice

We do not see any actual prejudice being caused into present matter. We have not been convinced by the argument of Mr Cassam Badal. According to him, had the second amendment be made through consultation with the Union, he would have drawn the attention of the Union that the selection process is not applicable in his case. This reasoning, if any, is clearly rebutted by Mrs Devi Deerpalsing. She stated earlier *“in this present case of Deputy Forest Ranger there is a first level Forest Guard and then comes the Forester which is the second level where the post is filled by promotion and Deputy Forest Ranger is at the third level and it is a supervisory grade since the*

officer is responsible to control the work and supervise the labour force in the forest range.” Indeed, no reason was forthcoming from Mr Cassam Badal who waited almost a year before raising any protest through the Union. Also, it is a fact that he attended the interview, but was not chosen.

Is it a prejudice then when the mode of appointment is changed from promotion to selection?

In the present matter, the exercise of amendment to the mode of appointment seems to have been put on the back of the Public Service Commission. We need therefore to see what are the powers of the Public Service Commission regarding that issue. The Public Service Commission is an emanation of the Constitution which holds its powers under **section 89 (1) of the Constitution.**

Section 89 (1) reads thus:

“(1) Subject to this Constitution, power to appoint persons to hold or act in any offices in the public service (including power to confirm appointments), to exercise disciplinary control over persons holding or acting in such offices and to remove such persons from office shall vest in the Public Service Commission.

The powers of the Public Service Commission with regard to appointments and promotion in the public service are contained in the Public Service Commission Regulations 1967. It is relevant here to quote Regulations 13, 14 and 15:

13. *In order to discharge its duties under this Part, the Commission shall exercise supervision over and approve all schemes for admission to any public office by examination, for the award of scholarships or the grant of study leave for special training for the public service, and over all methods of recruitment including the appointment and procedure of boards for the selection of candidates.*
14. *(1) In exercising its powers in connection with the appointment or promotion of officers in the public service, the Commission shall have regard to the maintenance of the high standard of efficiency necessary in the public service and shall –*
 - (a) give due consideration to qualified officers serving in the public service and to other persons;*
 - (b) in the case of officers in the public service take into account qualifications, experience and merit before seniority in the public service; and*
 - (c) where a public office cannot be filled either –*
 - (i) by the appointment or promotion of a suitable person already in the public service; or*

(ii) *by the appointment of a suitable person who has been specially trained for the public service, wholly or partly at public expense, call for applications by public advertisement unless –*

(A) for special reasons it decides not to do so; and

(B) where it is satisfied that no suitable candidates with the requisite qualifications are available in Mauritius, it decides that recruitment be undertaken by some agency outside Mauritius and arrange for such recruitment to be carried out.

(2) *Recommendations made to the Commission for promotion shall state whether the person recommended is the senior public officer in the particular class or grade eligible for promotion and, where this is not the case, detailed reasons shall be given in respect of each person in that same class or grade over whom it is proposed that the person recommended should be promoted.*

(3) *To be eligible to be considered for appointment or promotion to a vacancy in the public service, a candidate, whether or not a public officer, shall have the official qualifications and shall be available to assume the functions of the office within a reasonable period of time to be determined by the Commission.*

15. (1) *The Commission shall determine the form of advertisement issued in accordance with regulation 14 (1) (c).*

(2) *The qualifications specified in the advertisement shall be the official qualifications specified by the Head of Civil Service and Secretary for Home Affairs, with the agreement of the Commission, for the vacancy under consideration.*

In Regulation 13, the important words relevant to the present case are “supervision” and “approval”. The preparation is not done by the Public Service Commission and we believe that basic logic requires that since appointment and promotion are within the province of the employer, so should be the scheme of duties as well. In **E. CESAR and C.W.A RN 785 of 12.10.05** the Tribunal stated:- *“The Tribunal holds that, subject to an abuse of powers on the part of management (Mrs D.C.Y.P. and Sun Casinos RN 202 of 1988), matters regarding appointment and promotion of employees are essentially within the province of management. (M. Pottier and Ireland Blyth Ltd RN 279 of 1994, A. Ayrga and Tea Board RN 575 of 1998).”* Hurry (Supra) confirms: *“It stands to reason therefore, that the duty to prepare schemes of service rests on the responsible officer but that these must obtain the sanction of the Head of the Civil Service and agreed to by the Public Service Commission (Reg.15).”* We further add that in its supervisory role, we do not see anything ultra vires on the part of the Commission when the latter proposes an amendment to the scheme and

asks for the agreement of the Ministry concerned. Document A which we reproduce here is self-explanatory.

“Scheme of Service;

Posts in the Ministry of Agriculture, Food Technology and Natural Resources

I am directed by the Public Service Commission to refer to your letters of 16 February and 10 May 2004 and to inform you that the Commission has, under regulation 15 of the Public Service Commission Regulations, amended the proposed Schemes of Service for the post of

- (i) Forest Guard;
- (ii) Forester;
- (iii) Deputy Forest Ranger; and
- (iv) Forest Ranger

In the Ministry of Agriculture, Food Technology and Natural Resources as shown in the attached schedules and has decided that, if you agree to the amendments, the Schemes of Service in the amended form should be specified as the official ones approved by the Commission for these posts.”

We need to refer here to the relevant parts in the Personnel Management Manual.

Scheme of Service

- (1) ***(1.1.4) Unless provided by an enactment, or otherwise decided, there shall be in respect of each office in the public service an official scheme of service.***
- (2) *A scheme of service shall specify the salary, qualifications, duties and responsibilities of an office in a Ministry/Department, and where appropriate, the mode of appointment.*
- (3) *A scheme of service must be prepared with utmost care objectivity in relation to the organizational needs of Ministries/Departments.*
- (4) *Responsible Officers shall take direct responsibility in the preparation of schemes of service to ensure that the duties and qualifications are specified in clear and concise terms. Guidelines for the preparation of schemes of service are set out at Appendix 1B.*
- (5) *The procedures for the prescription of schemes of service are as specified in Appendix 1C.”*

Paragraph 1.1.4(4)

GUIDELINES FOR PREPARATION OF SCHEMES OF SERVICE

1. TITLE OF THE POST

- (a) *The title of the post should be as laid down in the Civil Establishment Order. It should indicate as clearly as possible the function and level of responsibility of the job.*
- (b) *If a post is to be filled by female candidates or male candidates only, this should be clearly specified in the scheme of service, unless indicated by the title of the post.*

2. SALARY

Should be as set out in the Civil Establishment Order.

3. QUALIFICATIONS

- (a) *Qualifications, experience and personal skills and abilities required of a job holder should be determined only after the knowledge required and the duties of the post have been carefully analysed.*
- (b) *Qualifications should be correctly and clearly stated. A clear demarcation should be made between those qualifications which are (i) essential and (ii) those which are desirable. Qualifications listed should be as exhaustive as possible.*
- (c) *Once academic qualifications have been prescribed for an entry post in a Cadre, they should not be as a general rule be repeated for higher posts in that Cadre.*
- (d) *Where different qualifications are proposed, these should be equivalent to one another. Care and objectivity should be exercised in weighing and balancing different sets of qualifications. In case of doubt, advice should be sought from the National Accreditation and Equivalence Council before any proposed scheme of service is submitted to the Ministry of Civil Service Affairs and Administrative Reforms for consideration.*
- (e) *Qualifications should, as far as possible, be capable of valid proof.*
- (f) *The upgrading/lowering of qualifications of a post has an incidence on the salary grading of the post. Therefore, any change in qualifications must be fully justified.*
- (g) *Qualifications should not contain any conditions which might encroach upon the constitutional prerogatives of the Service Commissions.*
- (h) *In schemes of service where training is provided, it is necessary to indicate clearly the type of training provided, its duration and whether it will be sanctioned by an examination or not.*
- (i) *Age limit should be specified, if necessary.*

- (j) *If holding a “substantive appointment” is to be a condition for eligibility to a post this should be mentioned in the scheme of service.*

4. DUTIES

- (a) *The duties should be defined in relation to organizational goals and objectives. They should be derived from an analysis of what work needs to be done and tasks that have to be carried out by the job holder, if the purpose of the organization or of an organizational unit is to be achieved.*
- (b) *They should reflect, as succinctly as possible, the specific demands of the job taking into consideration the level of responsibility, the qualifications experience and personal attributes needed to perform the job.*
- (c) *Duties should be as comprehensive as possible covering all aspects of the job to be done.*

5. GENERAL OBSERVATIONS

- (a) *In devising new schemes of service, provisos may be inserted to safeguard the interests of serving officers. Such provisos should, however, be limited in time and should in no way cause prejudice to the scheme of service proper.*
- (b) *Jobs, whether new or existing, should be designed/redesigned in such a way so as to fit into the existing structure of the Ministry/Department concerned.*
- (c) *In cases of restructure or the creation of new organizations, submissions of schemes of service to the Ministry of Civil Service Affairs and Administrative Reforms should invariably be accompanied by an organization chart.*
- (d) *There should be only one scheme of service for one grade in Ministry/Department, although there may be a number of posts in the same grade under different divisions of the same Ministry/Department. If it is considered desirable that vacancies in the Division be filled by officers from that Division only, then the necessary provision regarding qualifications and duties appropriate to the Division should be made in the scheme of service.*
- (e) *When reviewing a scheme of service for a post in a cadre, it is necessary to consider whether the scheme of service for other posts in the same cadre should not be reviewed simultaneously.*
- (f) *Any request for a review of a scheme of service should be accompanied by the reasons therefore.*

We need now to address our mind to paragraph 1.1.4 (5) (2) of the Procedures for Prescription on Schemes of Service attached to the Personnel Management Manual which according to us should not be read in isolation. We therefore reproduce the procedures in toto:

Paragraph 1.1.4(5)

PROCEDURES FOR PRESCRIPTION OF SCHEMES OF SERVICE

- (1) *A Responsible Officer, after consultation with his Minister shall submit to the Secretary for Public Service Affairs, any proposed scheme of service for examination.*
- (2) *Where the proposed scheme of service is found to be acceptable at official level, the Responsible Officer shall consult the appropriate staff association and shall submit the views of the latter together with his comments thereon, to the Secretary for Public Service Affairs.*
- (3) *The Secretary for Public Service Affairs shall consult the Staff Side.*
- (4) *The proposed scheme of service shall then be forwarded to the appropriate Service Commission for consideration and agreement.*
- (5) *Where the agreement of the appropriate Service Commission has been obtained, the scheme of service shall be prescribed in its official form.*

We understand that it is an exercise that is done in concert with the three parties, the Employer, the Employee and the Public Service Commission. While the Employer should retain his power to define the duties of the job, the Public Service Commission can have its say and blessing. But whatever is being done, should not be behind the back of the employee, in particular on issues that may have important bearings on the mode of appointment, the more so as they are directly linked to issues like qualifications and experience, among other things. We consider that in the present case an amendment brought to the mode of promotion to selection is an important issue that should have at the very least been done with more transparency i.e. informing the Union of such development although the latter's approval is not necessary.

(c) Late Protest

We cannot understand the retarded reaction to the second amendment on behalf of the Union which in fact took almost a year and this takes care of the second limb to the Union's dispute. The scheme was indeed not immediately applicable after it was made known to the Union.

For the reasons stated above, the dispute is set aside.

Rashid Hossen
(Ag. President)

Said Hossenbux
(Assessor)

Philippe Noel Jeantou
(Assessor)

Date: 28th April, 2008