

EMPLOYMENT RELATIONS TRIBUNAL

AWARD

ERT/ RN 49/20

ERT/RN 50/20

Before

Indiren Sivaramen	Vice-President
Vijay Kumar Mohit	Member
Rabin Gungoo	Member
Ghianeswar Gokhool	Member

In the matter of:-

Mrs Bibi Sahida Codobaccus (Disputant No. 1)

And

Mauritius Ports Authority (Respondent)

Mrs Yasmin B. Mooraby (Disputant No. 2)

And

Mauritius Ports Authority (Respondent)

The above two cases have been referred to the Tribunal by the Commission for Conciliation and Mediation under Section 70(4) of the Employment Relations Act, as amended (hereinafter referred to as "the Act"). Both cases were consolidated following a motion made by Counsel for Disputants and to which there was no objection. Both parties were assisted by Counsel. The terms of reference are similar in both cases (except for each respective post) and read as follows:

“Whether I should be granted three increments on my upgrading in the post of Senior Officer/Chief Officer Finance or otherwise.” (in the case of Disputant No 1)

Whether I should be granted three increments on my upgrading in the post of Senior Officer/Chief Officer Audit or otherwise.” (in the case of Disputant No 2)

Mr I.Moussa, negotiator, deponed on behalf of both disputants. He stated that the issue in the two cases is that the two disputants have been promoted and there has been an upgrading of their respective post and yet they have not been granted three increments. He added that in the conditions of service at the Respondent it is clearly stated that if one is promoted, one must be granted three increments. Previously, Disputants No 1 and 2 were occupying the post of Senior Officer Finance and Senior Officer Audit and Risk respectively. They are now occupying the post of Senior Officer/Chief Officer Finance and Senior Officer/Chief Officer Audit and Risk.

Mr Moussa stated that the post of Senior Officer is at level 7 whereas the post of Senior Officer/Chief Officer (Finance) is at a higher level 6. He stated that officers in grade of Senior Officer/Chief Officer Finance perform higher duties than Senior Officer Finance. He did not agree that there was a merger of the post of Senior Officer with that of Chief Officer. He added that if that was indeed the case, the lower post, that is, Senior Officer as well as the higher post, Chief Officer, should have been abolished against the creation of the new post. Mr Moussa stated that the post of Senior Officer Finance has not been abolished and averred that a vacancy in the said post has been filled. He stated that the disputants are performing duties which go beyond the duties of a Senior Officer. He also suggested that there were persons who were still occupying the post of ‘Chief Officer’.

In cross-examination, Mr Moussa suggested that an employee is granted three increments when he or she is promoted or when he is upgraded from one level to another level. He did not agree that there was a merger of the post of Senior Officer Audit and Risk Management and Chief Officer Audit and Risk Management. He however conceded that there was a letter to the effect that the Board had approved the merging of the post of Senior Officer Audit and Risk Management with that of Chief Officer Audit and Risk Management and that Disputant No 2 was informed that she would be on the higher level 6. Disputant No 1 was also informed in writing that following a merger of the post of Senior Officer Finance with that of Chief Officer Finance, she would occupy the post of Senior Officer/Chief Officer Finance graded at level 6.

Mr Moussa stated that since the disputants moved from one salary scale to a higher salary scale, this was a promotion for them. He stated that there is a difference of level in terms of responsibilities and duties between the work of a Senior Officer and that of a Chief Officer. He did not agree that the duties mentioned for Senior Officer /Chief Officer Audit and Risk Management were similar to the duties of Senior Officer Audit and Risk

Management. He suggested that the scheme of duties for the post of Senior Officer/Chief Officer is the same as the scheme of duties for the post of Chief Officer. He thus added that the post of Senior Officer/Chief Officer was 'fake' since it involved the same duties and required the same level of intervention as for the post of Chief Officer. He stated that in the case of Mrs Codaboccus also, the level of intervention was lower as Senior Officer as compared to Senior Officer/Chief Officer.

Mr Moussa accepted that the disputants were now benefitting from terms and conditions pertaining to salary scale level 6 and which terms they were not benefitting previously at level 7. He stated that the disputants have thus been promoted since they have been 'upgraded' by Management. He conceded that he was not aware of any case at the Respondent where one would have benefitted from three increments when one's post was merged.

Mrs Gungaram then deponed on behalf of the Respondent and she stated that on 16 June 2017, the Board decided to merge the post of Senior Officer Audit and Risk Management with that of Chief Officer Audit and Risk Management. Disputant No 2 was informed that she would be holding the post of Senior Officer/ Chief Officer Audit and Risk Management graded at level 6. Mrs Gungaram did not agree that there was a promotion. No offer of a promotion was made to either of them. She added that three increments are granted only in cases of promotion and not in cases of merging and upgrading of posts.

In cross-examination, Mrs Gungaram stated that the term 'promotion' or 'merger' was not defined in the Terms and Conditions of Service in the Human Resources Development (HRD) Report for Respondent. She conceded that there was no written policy on merger of posts at the Respondent. She also accepted that currently there is a post of Senior Officer Finance occupied by officers at the Respondent. Mrs Gungaram agreed that a promotion is when someone moves to a higher post. She stated that the post of Senior Officer /Chief Officer is a higher position than Senior Officer. However, she did not agree that the disputants had moved from a lower post to a higher post and maintained that the positions have been merged.

The Tribunal has examined all the evidence on record including the submissions of both Counsel. The Tribunal has not been provided with a copy of the HRD Report of 2016 and more precisely the relevant extract in relation to the granting of three increments following a promotion. However, from the evidence before us, this is not challenged and the Tribunal will thus proceed on the basis that this is the case at the Respondent. Similarly, the evidence adduced on behalf of Respondent, to the effect that increments are not granted for cases of merging and upgrading of posts, has also remained unrebutted. The Tribunal will thus proceed on the basis that where there is a merging and upgrading of posts, the principle of granting three increments will not apply.

It is apposite to note that even in the Report of the Job Evaluation Appeals Committee in April 2011 (copy annexed to the Statement of Case of Disputant No 1) following the Human Resources Development Report 2010, it was recommended that a new grade of Senior Officer, Finance be created and that the said grade of Senior Officer, Finance be eventually merged with the grade of Chief Officer, Finance in the context of the then next HRD report which was due in 2013. The letters issued to the disputants do not refer at all to any promotion and instead clearly provide that the Board had at its meeting of 16 June 2017, approved the merging of the post of Senior Officer (Finance) with that of Chief Officer (Finance) and the merging of the post of Senior Officer (Audit & Risk Management) with that of Chief Officer (Audit & Risk Management). Disputants No 1 and 2 were thus informed that they will accordingly (underlining is ours) hold the post of Senior Officer/ Chief Officer (Finance) and Senior Officer /Chief Officer (Audit & Risk Management) respectively. There was no ambiguity in the said letters and the disputants are not saying and cannot say that they believed that they were offered a promotion.

It is apposite to refer to the case of **E. César and C.W.A RN 785 (Award delivered on 12.10.05)** where the Permanent Arbitration Tribunal (as the Tribunal was then named) referred to various authorities governing matters regarding appointment and promotion:-

*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 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**).”*

However sympathetic a view one wishes to take regarding Mr César’s claim, the moreso as it appears to be his last wish before embarking on retirement, there must be some basis upon which the Tribunal can hold to, lest it may create a bad precedent. However small and petty his request may appear to be, we cannot intervene in the absence of evidence in support of his claim. The Tribunal is not here to grant by the mere asking. A claim must be justified.”

Also, copies of the job descriptions of the posts of Senior Officer, Finance and Chief Officer, Finance have been annexed to the Statement of Case of Disputant No 1. Similarly, copies of the job descriptions of the posts of Senior Officer, Audit & Risk Management and Chief Officer, Audit & Risk Management have been annexed to the Statement of Case of Disputant No 2. Following a careful examination of these documents, it is clear that there is a major overlapping of duties in the duties of Senior Officer, Finance and those of Chief Officer, Finance. In fact, duties listed at numbers 4 to 9 for Senior Officer, Finance are simply identical with duties mentioned at numbers 4, 5, 7, 8, 9 and 10 for Chief Officer, Finance. The duties under items 1, 2 and 3 for the post of Senior Officer, Finance have been put under very similar headings to the headings used for items 1, 2 and 3 for the post of Chief Officer, Finance. The detailed duties under

each of these items for both Senior Officer, Finance and Chief Officer, Finance are very similar except that in a few circumstances terms such as “to assist in” have been used for the Senior Officer, Finance whereas for the Chief Officer, Finance, terms such as “to be responsible for” or “to prepare” appear in lieu and stead.

Similarly, for Senior Officer, Audit & Risk Management and Chief Officer, Audit & Risk Management, no less than eleven out of sixteen duties listed for the Senior Officer are very similar if not identical to duties listed for the Chief Officer. The only differences noted would be that the Chief Officer, Audit & Risk Management has to plan/manage audit assignments and assist in devising audit programmes. The Tribunal is not prepared to find that the duties of Senior Officer, Audit & Risk Management and those of Chief Officer, Audit & Risk Management are very different but find instead that there is again a major overlapping of duties between the two grades.

Thus, the Tribunal cannot come to the conclusion that the decision to merge the relevant two posts in each relevant case was unreasonable or unwarranted the more so that the merging of these posts was recommended in the report of the Job Evaluation Appeals Committee following the HRD Report 2010 though it was to be considered in the context of the then next HRD Report due in 2013.

Now, in the face of such clear evidence, the disputants are asking the Tribunal to award or find that they have in fact been promoted and that there was no merging of grades. The Tribunal finds no evidence on record to suggest that either of the two disputants has been offered a promotion or promoted to occupy the post of Senior Officer/Chief Officer (Finance) or Senior Officer/ Chief Officer (Audit & Risk Management). Since the Board did not proceed to promote the disputants, the Tribunal cannot substitute itself for the Board and award that the disputants were promoted or were deemed to have been promoted.

The disputants are henceforth benefitting from a higher salary scale with benefits pertaining to that scale (higher level 6) and officers in the lower salary scale (at level 7) do not obtain the same benefits. The Tribunal has examined carefully all the evidence adduced before it and finds no reason to intervene in the present matter in the absence of evidence to suggest that the disputants have indeed been promoted (as opposed to the merging of posts). The Tribunal thus finds that the disputants have failed to show on a balance of probabilities that they should be granted three increments.

The Tribunal however is at a loss to understand how already merged posts such as Senior Officer, Finance can still exist on its own at the Respondent. This is what has resulted in the present disputes and created misunderstandings among the employees. The merging of posts should have been carried out in a more appropriate manner and sufficient information should have been provided to the relevant staff as to the modalities

and conditions of the merging of the said posts. Merging of posts leads to flatter and leaner organisations whereas allowing already merged posts to continue to exist on their own defeats the whole purpose of such an exercise. The Tribunal trusts that Management will pay heed to the above and see to it that there are no longer such inconsistencies within the organisation. This will at the same time ensure peace and promote good employment relations within the Respondent.

For all the reasons given above, both disputes are otherwise set aside.

SD Indiren Sivaramen

Vice-President

SD Vijay Kumar Mohit

Member

SD Rabin Gungoo

Member

SD Ghianeswar Gokhool

Member

13 July 2020