

EMPLOYMENT RELATIONS TRIBUNAL

AWARD

ERT/ RN 45/21

Before

Indiren Sivaramen	Acting President
Vijay Kumar Mohit	Member
Abdool Feroze Acharauz	Member
Arassen Kallee	Member

In the matter of:-

Mr Chitanand Luchman (Disputant)

And

Mauritius Post Limited (Respondent)

The above case has been referred to the Tribunal by the Commission for Conciliation and Mediation under Section 69(9)(b) of the Employment Relations Act, as amended (hereinafter referred to as "the Act"). The Respondent was assisted by Counsel whilst the Disputant conducted his own case before the Tribunal. The terms of reference of the point in dispute read as follows:

"The Mauritius Post Ltd is not complying with the recommendation and the clause of the Terms and Conditions thereof, in connection with cash grant/allowance payable to officers eligible for it in the grade of Senior Postal Executive."

The Disputant deposed before the Tribunal and he stated that he had to come previously before this Tribunal in relation to an increment to which he was entitled and which was not given to him. Following the case before the Tribunal, he was eventually paid his increment. He stated that consequently he became qualified for a 70% duty free remission which was however not mentioned to him. Afterwards, he wrote letters to claim his privilege for the 70% duty free remission but he was informed by the Human Resources Department that he was not entitled to same. He stated that he had to

resubmit proof to Respondent that the Employment Relations Tribunal had awarded him his increment.

Disputant averred that he purchased a car from an individual and not from a motor dealer. He stated that the terms and conditions of employment did not mention that he had to buy a car from a motor dealer and that there was only mention that it could be a second-hand car or a new car. He also stated that it was not mentioned as a condition that one should not have retired from the service.

Disputant stated that it was proposed to him that an allowance of Rs 2000- per month would be paid to him on a pro rata basis, that is, up to his retirement. He was not agreeable with same and reported a dispute to the Commission for Conciliation and Mediation. Disputant also challenged certain averments made by the Respondent in his Statement of Defence. He filed a copy of his Statement in reply to the Statement of Defence of the Respondent together with annexes and there was no objection to the filing of the said Statement and annexes on the part of Counsel for Respondent.

In cross-examination, Disputant stated that he retired from Respondent on 11 March 2017. He stated that, had he not been denied his increment as of 1st January 2017, he would have been eligible for the 70% duty free remission then and there. Disputant conceded that he did not pay any duty when he purchased his car. He did not agree that he had to show that duty had been incurred when he purchased his car. Also, he did not agree that his entitlement to the monthly allowance of Rs 2000- proposed to him should end on 10 March 2017.

The HR Manager of Respondent then deposed before the Tribunal and he stated that Disputant was occupying the post of Senior Postal Executive. With the adjustment in the salary of Disputant following the award of the Tribunal, the latter was earning a salary of Rs 44500-. He stated that following a salary review in 2013 and the Errors and Omissions Report of 2013, paragraph 1.32 of the said report under the item "70% duty Free Remission" catered for the payment of a monthly allowance of Rs 2000- to an eligible officer who declines to purchase a car. He explained why documents were sought from Disputant in a letter dated 5 January 2021 emanating from Respondent (Annex 7 to the Statement of Disputant in reply to the Statement of Defence of Respondent). He stated that only the Motor Vehicle Registration Book and a Sale contract from an individual was produced by the Disputant. The Respondent did not receive the MRA Customs Declaration Form sought and which was needed to know the amount of duty paid. The HR Manager stated that since the Disputant retired in March 2017, he would be paid the monthly allowance provided for in the 'Terms and Conditions' only up to his retirement, that is, for the last month the Disputant was going to be paid on a pro-rata basis.

In cross-examination, the HR Manager stated that the Disputant was initially informed that he was not entitled to the duty remission based on information available on the payroll system. He stated that the Respondent has to follow procedures and required the Customs Declaration Form to justify the disbursement of funds. He stressed on the fact that unlike in the civil service there was here no actual remission of duty as such but a refund in cash for duty remission. In re-examination, he maintained that there was no exception whereby the Respondent may not require a Customs Declaration Form.

The Tribunal has examined all the evidence on record including the Statement of Case of Disputant, the Statement of Defence of Respondent and the Statement of Disputant in reply to the Statement of Defence of Respondent, the annexes to these documents, documents produced during the hearing and the submissions of Counsel for Respondent and the oral statement made by Disputant before us. It is not challenged that with the award of the Tribunal in the case **ERT/RN 124/17, Mr Chitanand Luchman And Mauritius Post Ltd** (copy of award annexed to the Statement of Disputant in reply to the Statement of Defence of Respondent), the Respondent had to grant Disputant his annual increment as from January 2017. The latter thus at least 'theoretically' as from January 2017 met the threshold in terms of minimum salary to benefit from the '70% duty free Remission'. It is also undisputed that the Disputant met the other conditions mentioned in the relevant provision such as that Disputant was an officer of the Postal Services prior to corporatization. As per the letter dated 5 January 2021 from Respondent (Annex 7 to the Statement of Disputant in reply to the Statement of Defence of Respondent), it is clear that Respondent considered that Disputant was eligible for the '70% duty free Remission' subject to conditions mentioned in that letter.

Whilst the Disputant has annexed copies of several documents and letters to the 'Statement of Disputant in reply to the Statement of Defence of Respondent', the Tribunal has not been favoured with a copy of the initial application made by Disputant to the Respondent. Indeed, Disputant did not provide much information in his Statement of Case on his initial application to Respondent except that "I applied for same to the MPL. MPL rejected my claim." (paragraph 6 under *Facts related to my claim*). The Tribunal understands same to be a claim of 70% duty remission as stated at Paragraph A of his Statement of Case. The said Paragraph A reads as follows:

A. Para 1.31

70% duty Free Remission

We recommend that subject to availability of funds, officers of the level of Senior Postal Executive who were officers of the Postal Services prior to corporatization and drawing salary of Rs 44,500 and aged 58 years and above be eligible once in

their career to purchase a car of engine capacity of up to 1400cc on which duty up to a maximum of Rs100,000 would be borne by the Company.

I claim eligibility on this recommendation.

It has been specifically averred on behalf of Respondent in the Statement of Defence that (at paragraph 3(a)) *“by way of letter dated 26 May 2020, Disputant enquired about the payment of a cash grant equivalent to a duty remission to which he was allegedly eligible at the time of his retirement”*.

The Disputant has replied to this paragraph 3(a) as follows:

“I deny Para 3(a) and aver that on 26th May 2020, I set a claim to payment in cash of duty remission for a car I had bought. I further strongly dispute the use of the word “allegedly” by respondent to qualify my application in as much as at 1st January 2017 itself, I had qualified for such a benefit.” (paragraph 25 of the ‘Statement of Disputant in reply to the Statement of Defence of the Respondent’).

Yet, a copy of this letter dated 26 May 2020 has not been produced before us. Only a copy of a handwritten ‘covering’ letter dated 28 July 2020 has been produced as Annex 4 to the ‘Statement of Disputant in reply to the Statement of Defence of Respondent’. The letter reads as follows: *“I, the undersigned, wrote [or write] a letter to you and copy to the HRM, a copy of which is enclosed along. I shall appreciate to have a reply from you in connection with the request I have mentioned in the letter.”* The Tribunal has been left in the dark as to the exact terms of the request or claim/s which Disputant had made in his letter of 26 May 2020 and that enclosed (if at all, different from the letter of 26 May 2020) with his letter of 28 July 2020 (see above). Bearing in mind Annexes 5 and 6 to the ‘Statement of Disputant in reply to the Statement of Defence of Respondent’, the Tribunal finds that the claim must have been in relation to duty remission under paragraph 1.31 of “BCA Consulting Report on the Salary Review & Conditions of Service 2013 – Errors and Omissions Report March 2014” (as provided in the first part of the Statement of Case of Disputant) or section 1.31 of Respondent’s Salary Review and Conditions of Service 2013, Errors and Omissions Report (as worded in Annex 6 mentioned above).

The Tribunal notes that there is on record two slightly different versions of what should have been one and the same provision. Indeed, as an annex to his Statement of Case, the Disputant has included a copy of one page (page 6) of the Errors and Omissions Report 2013 for The Mauritius Post Limited where paragraph 1.31 read as follows:

“1.31 We recommend that subject to availability of funds, officers of the level of Senior Postal Executive who were officers of the Postal Services prior to corporatization and drawing salary of Rs 44,500 and aged 58 years and above be eligible once in their

career to purchase a car of engine capacity of up to 1400 cc on which duty up to a maximum of Rs 100,000 would be borne by the Company.”

However, Doc B produced by the representative of Respondent which also purports to be a copy of page 6 of the said Errors and Omissions Report 2013 has the following as paragraph 1.31:

“1.31 We recommend that subject to availability of funds, officers of the level of Senior Postal Executive who were officers of the Postal Services prior to corporatization and drawing salary of Rs 44,500 and above be eligible once in their career to purchase a second hand car or a new car of engine capacity of up to 1400 cc on which duty up to a maximum of Rs 100,000 would be borne by the Company.”

The Tribunal notes that this Doc B has been produced as a “Certified True Copy”. Also, Doc B contains a further paragraph 1.32 which reads as follows:

“Where an officer is eligible for duty exemption for the purchase of a new/second hand car decline so, a monthly allowance of Rs 2,000 would be payable to the officer subject to a maximum of Rs 100,000 and is effective as from 1 March 2014.”

The above paragraph however does not appear in the copy of the document bearing “Page 6” annexed to the Statement of Case of Disputant. There is no explanation on record as to this alleged discrepancy. The Tribunal notes that though the copy relied upon by Disputant does not refer to “purchase a second hand car or a new car”, the Disputant averred before us that the terms and conditions of service (which should apply in his case) mentioned either a second hand car or a new car. The Tribunal notes that paragraph 1.32 of Doc B has been reproduced with minor amendments at paragraph 12.6.1 of the Terms and Conditions of Employment at the Respondent (as per Doc C). Be that as it may, the Respondent has proposed and agreed to pay monthly instalments of Rs 2,000 to the Disputant as per the said paragraph 1.32. In the light of the particular facts in the present matter, the Tribunal finds nothing wrong with same so long as Disputant has not benefitted under the previous paragraph 1.31.

The main issue under paragraph 1.31 of Doc B is whether the Respondent is right to have insisted for the documents sought and to have refused to consider the application of Disputant under paragraph 1.31 of Doc B (option available to a worker who purchases a car). We have read carefully the wording of paragraph 1.31 (be it from Doc B or the document bearing page 6 annexed to the Statement of Case of Disputant), and that clause is clear that the Respondent undertakes to bear the duty paid up to a maximum of Rs 100,000. This is the only obligation of the Respondent and irrespective of new or second hand car, the officer, as an applicant claiming entitlement to benefit from this provision, has to show essentially (apart from other conditions mentioned in that paragraph and which would be to the knowledge of the Respondent) that he has

purchased a car during the period concerned and has incurred duty on the purchase of the car. The Respondent does not and cannot reimburse part of the price paid for a car. This paragraph deals specifically with duty to be borne by the Respondent up to a maximum of Rs 100,000. In the light of the admission by Disputant that he did not pay any duty for the purchase of his car and in the absence of any document certifying the amount of duty incurred by the Disputant, it is clear to us that the Respondent cannot in turn bear duty which has not been incurred in the first place. In accordance with good governance, Respondent was perfectly entitled and duty bound to ask for a certificate emanating from the appropriate authority to certify as to the amount of duty incurred by the Disputant on the purchase of his car. In the absence of such a certificate and since no duty was incurred by the Disputant following the purchase of his car, the Respondent could not bear any amount of duty.

The Tribunal bears in mind that the Respondent should have updated its records following the earlier award of the Tribunal in the case of **Mr Chitanand Luchman And Mauritius Post Ltd, ERT/RN 124/17**, and that Disputant should not have been informed in the first place that he was not eligible for the duty remission before he was later informed that his request had been favourably considered by Management subject to conditions mentioned and the submission of certain documents. However, the Tribunal finds nothing wrong for the Respondent to have requested for the documents sought in its letter dated 5 January 2021 (Annex 7 to the 'Statement of Disputant in reply to the Statement of Defence of the Respondent'). This was the only way to ascertain duty actually paid by Disputant for the Respondent to in turn bear same. Since Disputant accepted that he had not paid any duty, there was no duty which Respondent could in turn bear. The Respondent was thus perfectly right to turn down the application for duty remission under paragraph 1.31 of Doc B.

The reference made to Annex 12 to the 'Statement of Disputant in reply to the Statement of Defence of the Respondent' cannot be of much help to the Disputant. Provision 16.1.1 in that document reads as follows:

“Employees from the Civil Service holding posts entitled to a duty remission before the corporatization shall be eligible to a cash grant equivalent to the duty remission.”

This is something different from paragraph 12.6.1 of the Terms and Conditions of Employment mentioned above and refers to “a cash grant equivalent to the duty remission”. There is no evidence before us that Disputant was an employee from the Civil Service holding a post entitled to a duty remission before the corporatization (underlining is ours). This provision simply does not apply in his case and he can only benefit from the provision under “Duty Remission” when he qualified for same as from January 2017.

Under the second option at paragraph 1.32 of Doc B, the issue is whether, once the monthly allowance has been paid or is due under the said paragraph, it shall be stopped when the eligible officer retires. The payment of this allowance derives from paragraph 1.32 of Doc B (and now also from paragraph 12.6.1 of the 'Terms and Conditions') and is payable by virtue of the fact that an officer is eligible for duty exemption as per the preceding paragraph 1.31 of Doc B.

Unlike paragraph 1.31 where the Respondent undertook that "duty up to a maximum of Rs 100,000 would be borne by the Company", in the case of paragraph 1.32, it is clearly not in relation to duty incurred by an officer and borne partly or completely by the Respondent. The simple reason is that the officer here may have declined altogether to purchase a car. There is thus no issue of duty incurred or remitted. However, the Tribunal notes that the monthly allowance is payable to the officer subject to a maximum of Rs 100,000. There is nothing in paragraph 1.32 of Doc B which indicates that the monthly allowance is to continue after the retirement of the beneficiary. This paragraph has been phrased very differently from, say, Provision 16.1.1 of Annex 12 to the 'Statement of Disputant in reply to the Statement of Defence of the Respondent' (see above) where reference was made specifically to "a cash grant equivalent to the duty remission". Under paragraph 1.32 of Doc B, the allowances are earned on a monthly basis. In the light of the terms of paragraph 1.32 of Doc B (or even paragraph 12.6.1 of Doc C), Disputant cannot pretend that he ought to continue to benefit from monthly allowances of Rs 2000- even after his retirement from the service of Respondent when the paragraph *in lite* and other evidence do not suggest that this should be the case.

The Tribunal has no hesitation in finding that the Respondent has properly interpreted the relevant provisions in the present matter and that Disputant was, at best, entitled to the said monthly allowance of Rs 2000- as from January 2017 up to 10 March 2017 on a pro-rata basis.

For all the reasons given above, the Tribunal finds that the Disputant has failed to prove his case on a balance of probabilities before us and the dispute is set aside.

SD Indiren Sivaramen

Acting President

SD Vijay Kumar Mohit

Member

SD Abdool Feroze Acharauz

Member

SD Arassen Kallee

Member

7 March 2022