

EMPLOYMENT RELATIONS TRIBUNAL

AWARD

RN 1041 and RN 1060

Before:

Rashid Hossen	President
Jean Paul Sarah	Member
Abdool Feroze Acharauz	Member
Maurice Christian Aimé Laurette	Member

In the matter of:-

R.N. 1041 – Union of Employees of Central Water Authority

And

Central Water Authority

In presence of Pay Research Bureau

R.N.1060 – Union of Employees of Central Water Authority

And

Central Water Authority

In presence of Pay Research Bureau

The two above cases have been consolidated.

The present dispute was referred by the Minister of Labour, Industrial Relations and Employment in virtue of **Section 82 (1) (f)** of the then **Industrial Relations Act 1973**, as amended.

The newly enacted **Employment Relations Act 2008** makes provision for such dispute to be heard before the newly constituted Employment Relations Tribunal.

“Section 108 (10) – Transitional Provisions: -

“Any proceedings pending immediately before the commencement of this Act before the Permanent Arbitration Tribunal and the Civil Service Arbitration Tribunal shall be deemed to be proceedings pending under this Act and may be proceeded with before the Tribunal.”

The points in dispute are:

- 1. Whether Mr. M.H.I. Atchia, Mrs. D. Ramchurn, Mrs. R.B. Salamut, Mrs. M. Chinappen and Mrs. T. Kishto, Clerks at the CWA, should be appointed as Senior Clerks with effect from 20th August 2007.**
- 2. Whether Mrs P. Ramjuttun and Mrs M. Rambaree should be appointed as Senior Clerks with effect from August 2007.**

The Union, “The Applicant”, was represented by Mr. A. Yik Long, assisted by Mr. Dev Ramano, of Counsel and Central Water Authority, “the Respondent”, was represented by Mr. Tuyau, assisted by Miss Shaheena A. Carrim, of Counsel. The relevant employees mentioned in the points in dispute will be referred to as the Relevant Employees.

Statement of Case of the Union

The clerical cadre

Promotion from the clerical cadre is on a grade to grade basis, as follows:-

Principal Clerk (Three years experience as Senior Clerk)

↑Senior Clerk (Three years experience as Clerk)

↑Clerk (Entry grade)

Type of promotion

The Recruitment and Selection Procedures of the Central Water Authority and the Pay Research Bureau (PRB) Report 2003 define what are grade to grade and class to class promotions –

(a) Grade to Grade Promotion

Recruitment and Selection Procedures

1.2. Categories of Posts

(b) Promotion shall be made on a grade to grade basis for posts listed in Appendix F, on the basis of qualifications, experience, merit and seniority subject to provisions contained in appendix B.

The posts as listed in Appendix E should be made on the basis of examination and/or interview.

PRB Report 2003

14.3.6. On the other hand, it stands to reason that grade to grade promotion at levels where officers are expected to perform duties of the same nature requiring mainly increased experience for the performance of the job could be made on the usual basis of experience, merit and seniority.

Seniority could also be considered decisive in matter of promotion of lower levels where physical and technical skills can be developed through long practice.

14.3.10 (a) for grades at lower levels, where physical and technical skills can be developed through long practice and for grades with duties of same nature requiring mainly increased experience for the performance of the job, promotion could be made on the usual basis on the recommendations of the Supervising Officer.

14.3.10. (e) Where a selection exercise has been made for one of the levels of a cadre, appointment to the next grade could be made on the basis of seniority.

(b) Class to Class Promotion

Recruitment and Selection Procedures

1. Recruitment and Selection

1.1. The Authority shall have regard to the maintenance of the high standard of efficiency necessary in the Authority and shall give due consideration to qualified officers in the Authority and shall take into account except in case of grade to grade promotion, qualifications, experience and merit before seniority.

PRB Report 2003 *class promotion which involves a complete change in the nature of the job on promotion is already made through a selection exercise and the procedure is not disputed by any party.*

14.3.10. We recommend that should invariably be made on the basis of selection. The above-mentioned recommendations constitute the terms and conditions of service of all employees having signed the PRB Option Form.

The PRB Report 2003 further elaborates on the question of procedures, namely qualifying and competitive examinations, with seniority as the main factor for grade to grade promotion –

14.3.3. In our 1987 Report we recommended, as a measure to combat the lowering of the standard of performance and efficiency that as far as possible qualifying/competitive examination should be introduced at various levels: qualifying examination for grade-to-grade promotion and competitive examination for class-to-class promotion.

It was further recommended that examinations for promotion be mainly work-related and that, whenever appropriate, attendance at designated courses should be a condition for promotion.

14.3.8. We consider that the objective of a proper promotion exercise is the enlistment of the right candidate for the right job. Harmonising promotion procedures and criteria is not a sine qua non condition to achieve this end.

Both promotion procedures, namely, through seniority on the basis of a recommendation from the Responsible Officer and through a selection exercise carried out by the commission, have their own merits and demerits and a complete standardization on one or the other would not be in the interest of the Public Service.

The scheme of service of Senior Clerk

Despite the above-mentioned procedures and conditions of service, the CWA failed to update the scheme of service of Senior Clerk.

The following qualification requirement was used for the filling of vacancies: *'By the selection from the grade of Clerk having at least three years experience on the basis of written and oral tests.'*

The promotion exercise to fill vacancies in the grade of Senior Clerk contravenes the conditions of service of the clerical cadre as the CWA used the criteria provided for class to class promotion.

The seniority list of successful candidates

After several months of lecture courses, the CWA conducted a competitive written examination and the seniority list of successful candidates stood as follows –

Name of Officer	Date of Appointment as Clerk	Seniority Position
Salamut Rookshana	21 November 1979	1
Kishto Tuckwantee	22 November 1979	2
Chinappen Malligaye	22 November 1979	3
Mongelard Sevika	22 November 1979	4
Ramjuttun Premawtee	22 November 1979	5

Atchia Mamode Hossen I	26 November 1979	6
Munbodh Rajendra	26 November 1979	7
Gheesah Mohamed K	17 June 1980	8
Mowlabaccus Nazma	22 December 1980	9
Ramdolin Renuka	18 November 1983	10
Rambaree M	20 June 1989	11
Ramchurn Doorgawanti	20 June 1989	12
Gowri Luxmy	20 June 1989	13
Jagessur A.K.Tiwari	17 September 1989	14
Gheesah B Shafinez	12 November	15
Aubeeluck Khamellee	1 December 1989	16
Tuyau Doreen	1 December 1989	17
Nemchand Simla	11 February 1995	18
Surfraz Madina	11 February 1995	19
Ramsamy Nanda	20 June 2001	20

Summary of the professional life of Mr. M H I Atchia and others

Employees	Mr. M H I Atchia	Mrs. D Ramchurn	Mrs. R B Salamut	Mrs. M Chinappen	Mrs. T.Kishto
Seniority	6 th	12 th	1 st	3 rd	2 nd
Years of Service	28	28*	28	28	28
Posting (Job Experience)	Finance (Examination), Finance (Payroll), Commercial (Billing), Commercial (Debtors)	Commercial (Billing), Commercial (Debtors), Customer Service (St Paul), Operations (With Chief Engineer), Operations (Morcellement)	Registry, Hydrology, Finance, Operations (MAV)upper, Audit	Customer Service (Rose Hill), Customer Service (Port Louis), Commercial (Billing), Commercial (Debtors), Operations (Morcellement), Finance, WR/OSS (M&E)	Personnel, Water Rights, Registry, Commercial (Billing) Customer Service, (Mahebourg), Customer Service (Souillac), Commercial (With Dep.Manager) Water Resources Unit (MPU)
Actingship (Duties of SeniorClerk)	Finance (Examination), Commercial (Billing) Commercial (Debtors)	Commercial, Operations (General) Operations (Morcellement)	Registry (various periods between 1999 and 2005), Operations (2005 to 2006) Audit (2006 to 2007)	Commercial (Billing), Commercial (Debtors), Customer Service (Rose Hill), Customer Service, P.Louis	Commercial, Customer Service (St Paul)
Examination	1994,1999,2007	1994,1999,2007	1994,1999,2997	1994,1999,2007	1994,1999,2007

- Mrs D. Ramchurn joined the CWA as Clerical Assistant in April 1979. She was appointed Clerk in 1989.

As pointed out in the preceding paragraphs, the CWA assessed candidates on the basis of competitive written and oral tests, reducing the seniority factor to nothing.

Following the oral test of 27 June 2007, seven Clerks were selected for promotion as Senior Clerks with effect from 20 August 2007-

Name of officer	Date of appointment as Clerk	Seniority Position
Gheesah Mohamede K.	17 June 1980	8 th
Mowlabaccus Nazma	22 December 1980	9 th
Gowry Luxmi	20 June 1989	13 th
Jagessur A.K. Tiwari	17 September 1989	14 th
Aubeeluck Khamellee	1 December 1989	16 th
Tuyau Doreen	1 December 1989	17 th
Sufraz Madina	11 February 1995	19 th

The Union drew the attention of the management to the fact that seniority should have been the decisive factor in such a promotion exercise, as the only additional qualification requirement is three years experience.

On 22 July 2008, Mr. Tuyau confirmed that the assessment was made on the following criteria, that is, criteria recommended for class to class promotion –

- (a) 60 points for the competitive written examination, and
- (b) 40 points for the oral test.

Observations and comments of the Union

During the past years the Central Water Authority (CWA) ignored established procedures and conditions of service and engaged itself in controversial promotion exercises, more specifically grade to grade promotions.

The management's decision to ignore the seniority factor for grade to grade promotion means that the door was automatically wide open for juniors to jump over seniors.

The present case is not an isolated case of contempt of conditions of service but it is relevant also to past promotion exercises to fill vacancies in the grades of inspector, Senior Engineer, Chief Works Officer and Principal Clerk respectively.

This state of affairs ruined the career prospects of many loyal and experienced employees, with officers still fighting for a promotion after nearly 30 years service with the CWA.

Since a grade to grade promotion is by definition a promotion from experienced officers within a specific cadre, and the only qualification requirement being additional job related experience, the Union maintains that the promotion exercise to fill the posts of Senior Clerk contravenes existing procedures and conditions of service because –

Competitive examination concerns only class to class promotion and the assessment made in this particular case goes against the recommendations of the Pay Research Bureau Report 2003.

Mr. MH I Atchia and the other employees mentioned in the Table “summary of the professional life...” followed courses and successfully passed the written examinations some three times in a row. There were no adverse reports against any of them at the time of the promotion exercise

They have acted as Senior Clerks on several occasions and they have performed the duties with diligence; and this group of employees are senior to almost all of the officers appointed on 20 August 2007.

Claim

The Union avers there is ample evidence of the failure of the CWA to comply with the promotion procedures and the conditions of service of the clerical cadre.

In the following tables, the Union compares the seniority position of Mr. H I Atchia and others with the senior Clerks appointed in August 2007-

Name of Officer	Seniority Position
R. Salamuth	1 st
T. Kishto	2 nd
M. Chinappen	3 rd
M.H.I. Atchia	5 th
M.K. Gheesah	7 th
N. Mowlabaccus	8 th
D. Ramchurn	12 th

L. Gowri	13 th
A.K.T. Jagessur	14 th
K. Aubeeluck	16 th
D. Tuyau	17 th
M. Surfraz	19 th

Statement of Case of Central Water Authority

1.-Vacancies in the grade of Senior Clerk were advertised internally on 18 July 2005 with the following qualifications requirement:

“By selection from officers in the grade of Clerk having at least three years’ experience on the basis of written and oral tests.”

The advertisement also contained the following note:

“The selection exercise will constitute of a competitive written examination followed by an interview.

The competitive examination will be based on the following topics:

- (i) Role, Responsibility and Functioning of the CWA*
- (ii) Conditions of Service/Personnel Issues*
- (iii) Finance orders/GDP/Stores Orders*
- (iv) Registry and its procedures*
- (v) Committees/Meetings*

2. ~~Three~~ ~~three~~ candidates submitted an application and they followed an intensive four months training programme on the topics mentioned above as a preparation for the competitive examination which was held on 16 September, 2006. However, on the first day of the training programme, it was made clear by the then Manager (Human Resources) that:

- (i) as per the job specifications, competitive written examination would form part of the selection exercise;
- (ii) 60 % of the marks of the written examination would be computed for the final selection;
- (iii) the interview exercise would carry a weight of 40 %; and
- (v) those not scoring 40 % of marks at the written examination would not be convened for the interview.

3. Twenty six candidates sat for the competitive examination held on 16 September 2006. Twenty candidates passed the written examination and on 27 June 2007 underwent the interview exercise.

4. At its sitting on 27 July 2007, the CWA's Board approved that the following candidates be offered appointment as Senior Clerk:-

No	Name	No.	Name
1	Mrs. Khamelee Aubeeluck	5	Mr. Mahomed K. Gheesah
2	Mrs. Nazmahbee Molabaccus	6	Mr. Ashokumar T. Jagessur
3	Mrs. Bibi Madina Surfraz	7	Mrs. Doreen M.J. Tuyau
4	Mrs. Lukshmi Gowry		

And those mentioned hereunder were placed on a waiting list and would be offered appointment as Senior Clerk as and when vacancies would arise.

No	Name	No.	Name
1	Mrs. R. Ramdolin	8	Mrs. S. Nemchand
2	Mrs. Bibi S. Gheesah	9	Mrs. D Ramchurn
3	Mrs. N Ramsawmy	10	Mrs R. Salamut
4	Mrs. T Kishto	11	Mrs. S D. Mongelard
5	Mr. R Munbodhowa	12	Mr. M H I. Atchia
6	Mrs. P Ramjuttun	13	Mrs. M Chinappen
7	Mrs. M Rambaree		

It is to be noted that in accordance with the provision of paragraph 5.1 of the Recruitment and Selection Procedure, a waiting list is valid for a period of one year.

5. At page 3 of the statement of case of the CWA, the Union of the Employees of CWA quoted the provision at paragraph 14.3.9(a) of the PRB Report 2003 regarding class-to-class promotion. CWA, however, submits that promotion to the grade of Senior Clerk from that of Clerk is a grade-to-grade one and that the provisions as quoted hereafter, at paragraph 14.3.9 (b) is applicable rather: *"grade to grade promotion should be determined on a case to case basis and the mode of promotion explicitly mentioned in the relevant scheme of service."* On that score, CWA has proceeded in accordance with the qualifications requirement of the post as mentioned at paragraph 1 above.

6. CWA further draws attention to paragraph 14.3.10(d) of the PRB Report 2003 which reads as follows:-

We further recommend the following promotion framework as a guideline for determining the promotion procedure for grade-to-grade promotion.....(d)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;..

7. These recommendations show clearly that grade to grade promotion should be based according to the relevant schemes of service. Further, the recommendation shows that seniority is not the determining factor in the promotion exercise but that the exercise is a selection exercise.

8. CWA contends that written and oral tests are provided for under paragraph 14.3.10(d) of the PRB Report 2003, which part of the Report has been discarded by the Union.

9. CWA disputes that it was under a duty to update the scheme of service of Senior Clerk and further refutes any allegation that the scheme of service of Senior Clerk is not in line with the PRB Report 2003.

10. On the basis of the foregoing, the CWA submits that the prescribed procedure as spelt out in the –

(i) Scheme of Service for the post of Senior Clerk

(ii) Provisions of the Recruitment and Selection Procedures; and

(iii) the relevant recommendations in the PRB Report 2003

have been strictly followed in the conduct of the selection exercise for the post of Senior Clerk.

11. In any event, the Tribunal is invited to take into account the fact that, given the prevailing conditions where efficiency overrides other considerations, appointing the Relevant Employees on the sole basis of seniority as advocated by the Applicant would put CWA and its employees at a disadvantage and would jeopardize the proper running of the CWA.

12. CWA therefore requests the Tribunal to reject the claims of the Applicants and declare that no dispute exists between CWA and the Applicants.

Testimonial Evidence

Mr. André Yik Long, representative of the Applicants deponed in examination in chief as to the following:-

1. Mr. André Yik Long swore as to the contents of the Statement of Case of the Applicants. He stated that the CWA published an advertisement in connection with a promotion exercise and informed that the selection exercise will constitute of a

competitive written examination followed by an interview. The PRB Report 2003 provides that the CWA is bound to amend the job specifications to include the recommendations of the Report. Paragraph 14.3.9 (b) explicitly states that criteria for selection and promotion should be included in all job specifications/Scheme of Service [Annex 3 in the Statement of Case of the Union]. The CWA has not done so. There is no mention of competitive examination in the job specification. It is only in the notice of advertisement that CWA inserted this additional criterion.

2. Counsel for the Union explained that the Scheme of Service/Job Specification under reference dates back to 1993 and had not been updated to include that "Seniority is a decisive factor" as recommended in the PRB Report 2003. Moreover, CWA has added an element of competitive examination in the promotion exercise which is a criterion for class-to-class promotion and not for grade to grade promotion as is the case for promotion from Clerk to Senior Clerk. Consequently, a criterion to select employees for class to class promotion has been adopted to select employees for grade to grade promotion, thus depriving them of their seniority status.

3. Paragraph 14.3.10(d) of the PRB Report which is mentioned under items 5 and 6 of the Statement of Case of the Respondent does not apply to employees concerned with the promotion exercise for Senior Clerks; This paragraph 14.3.10 (d) applies to managerial posts which are defined by the PRB to be at the middle or higher level; The clerks who are concerned with the present dispute are at the lower level, and it is paragraph 14.3.10(a) which applies to them.

4. "For grades at lower levels, where physical and technical skills can be developed through long practice and for grades with duties of same nature requiring mainly increased experience for the performance of the job, promotion could be made on the usual basis of the Supervising Officer."

5. Para 14.3.10 (d) The selection exercise, both for middle and higher levels, should not necessarily be a competitive examination but could consist of assessment of training received and experience.

6. There would be no examination. However, under paragraph 14.3.10 (d), the Applicants who are at the lower level would have to sit for a competitive examination.

7. Under cross-examination, the representative of the Union agreed that the subject matter under consideration was grade to grade promotion. With regard to the issue about middle level lower level, he explained that there was a clerical cadre at the CWA comprising of the Clerk, the Senior Clerk and the Principal Clerk. He stated that automatically the entry grade is the Clerk and it is at the lower level of the cadre. But he admitted that the PRB report does not indicate that the Senior Clerk is not at a middle or higher level and is instead at a lower level. He however added that a Senior Clerk is not a Manager. As far as he was concerned, the Senior Clerk is at the lower level, and the Assistant Secretary at the middle level.

8. The representative of the Union agreed that all the Applicants in the present case had submitted applications for the competitive written test and the interview, and that they followed an intensive training program during 4 months; Out of the 26 persons who participated in the examination only 20 were successful in the written examination. The participants were aware that there will be a competitive examination, but they were not aware that the written examination will carry 60 % of the total marks and the interview 40 %. The Trade Union protested against the competitive examination but they were not aware of the marking allocation of 60% and 40%. It is only later on that they became aware of this. He agreed that in the present matter there is a combination of written examination and oral test.

9. The representative of the Union agreed with the provisions of para 14.3.9 (b) with regard to “grade to grade promotion” which should be determined on a case to case basis and the mode of promotion explicitly mentioned in the relevant “scheme of service”. He also expressed his agreement that in the Scheme of Service under consideration the mode of promotion is by selection on the basis of written and oral test.

10. In reply to Counsel for the Respondent, the representative of the Union stated that he was in agreement with para 14.3.10(d) which provided , interalia, that the selection exercise should not necessarily be by competitive examination in respect of middle level and higher level positions. He, however, added that should Senior Clerk be recognized to be at the middle level, he would not agree to competitive examination and the 60/40 formula because the PRB provides that it is not necessary to be a competitive examination.

11. He expressed agreement with the statement of Counsel to the effect that since para 14.3.10 (d) provides that the selection exercise should not necessarily be competitive that it should not be competitive, but he added that the Union is aware that for grade to grade promotion, in accordance with the recruitment and selection procedure, it is qualifying examination which is applied and not competitive. He explained that competitive examination has to do with class to class promotion which involves a change in the nature of the work, from one “filière to another”.

12. In reply to the Tribunal, the Union said that the recommendation of the PRB Report in respect of grade to grade is correct but that there is no competitive examination. If there is to be any examination, it should be qualifying examination. With regard to middle and higher levels, the Union stated that this did not concern Clerks and Senior Clerks as they are not managers. The Union admitted that they had no document to support this argument. The argument is based on the structure of the CWA and how it functions. At the lower level there are the clerks and the Administrative Section; then there are the Senior Clerks, Principal Clerks etc. It cannot be said that a Clerk or Senior Clerk is a manager. However, we have no document to support this argument.

13. Under re-examination by Counsel for the Applicant, Mr. Yik Long stated that there has not been any update of the job specification of 1993. If there would have been an update, it should have been in conciliation with the PRB Report. He also stated that the

conditions of service of the CWA are essentially governed by the Report of the Pay Research Bureau, so that the job specification 1993 should have been updated in conciliation with the PRB report of 2003. This has not been done.

Mr. Tuyau, Senior Human Resource Officer, Central Water Authority deponed as to the following under oath:-

1. He confirmed that whatever has been stated in the Statement of Case of the Respondent is true and correct. He added that the post of Senior Clerk as it was at the time of the dispute has now been restyled Executive Officer, that is, has been aligned to what is obtainable in the civil service and the same criteria is applicable today as regards appointment. He confirmed that the post of Senior Clerk has been aligned to that of Executive officer in the Civil Service by virtue of PRB 2008; all terms and conditions of service remain the same, the salary remains the same as well as the criteria for appointment; it is only the appellation of the post that has changed.

2. With regard to the paragraph relating to middle and lower level, he stated that this paragraph applied to manual grades and where in fact there is no need for examination and all these things; this is a matter of experience on the field. But as regards the Executive Officer and/or the Senior Clerk, they are now responsible of units, so they are in some way, acting at a middle managerial level. The duties are listed in Annex 3 of the Statement of Case of the Applicants, and he is of the view that this, at least, applies at the middle level. As indicated in the Statement of Case, he has relied on that provision to justify that a competitive examination is possible together with the oral test.

3. Referring to para 10 of the Statement of case of the Respondent, he stated that the CWA has followed the prescribed procedure for that selection exercise.

4. As far as the updating of the Scheme of Service is concerned, with regard to this post of Senior Clerk the Authority did comply with provisions at 14.3.9 (b). In the case of Senior Clerk, the CWA felt it convenient to keep it as it was, whereas for the post of Assistant Inspector to Inspector there is a qualifying examination. The Respondent found it convenient to keep it as it is; by selection on the basis of written and oral tests. Mr. Tuyau added that the term selection in their technical jargon means by competition.

5. Under cross-examination, Mr. Tuyau confirmed that the restyling of the post of Senior Clerk was based on the PRB Report 2008, and that the promotion exercise of Clerks to Senior Clerks was effected in 2007, well before the PRB. He also agreed that the criteria that should have been used for promotion of Clerks to Senior Clerks should have been based on PRB Report 2003.

6. He said that he was the Senior Human Resource officer and that he was a middle level cadre, but not the manager. In 1980 he was a Senior Clerk; he was not promoted to the post of Senior Human Resource Manager; he had to compete for it. He was promoted

from Clerk to Senior Clerk on the basis of seniority and a clean record, under an old scheme of service.

7. He admitted that the conditions of service are governed by the PRB regime, and that after the publication of a PRB Report, the employees have to sign an option form to indicate their acceptance of the conditions prescribed in the Report. He added that the PRB Report generally prescribes the different procedures to be adopted for promotion at the CWA, and that promotion procedures are based on two documents, i.e. the recruitment and promotion procedures at the CWA and the PRB Report 2003. Referring to para 1.1 of the Recruitment and Selection procedure of the CWA, [and in particular the last sentence which reads: *...and shall take into account, except in the case of grade to grade promotion, qualifications, experience and merit before seniority*] he stated that seniority is not interpreted as a decisive factor, but as a reported factor, and not an overriding criteria for appointment. It is one of the criteria.

8. He also admitted that in para 14.3.3 of PRB report 2003 there is a recommendation for *“qualifying examination for grade to grade promotion and for competitive examination for class-to-class promotion”*.

9. With regard to paragraph 14.3.10(d) which provides, inter alia, that *“The selection exercise, for middle and higher levels, should necessarily be a competitive examination....”* Mr. Tuyau stated that whether a competitive examination should be held or not depends on the structural organization and the level of performance expected. The CWA felt that for this level of responsible unit in the structure, a selection exercise was necessary.

10. In para 14.3.10(a) where there is a provision that *“ promotion could be made on the usual basis on the recommendation of the Supervising Officer”*, Mr. Tuyau said that the CWA interpreted it as applicable to operational level, i.e. manual grades who needed full experience, physical and technical skills, and not so much applicable to the Administrative Class. He added that it is also applicable for grades with duties of the same nature, but not applicable to the Senior Clerk who has to manage a unit. The lowest unit in the Administrative Class is the Telephone Operator.

Mr. T.Jeebodhun (under solemn affirmation), Principal Job Analyst, Pay Research Bureau deposed as to the following:-

1. The Pay Research Bureau is an independent institution which carries an overall review of pay and grading structure and conditions of service of employees in the public sector every five years. The PRB also provides advisory services as far as structures and creation of new levels are concerned, and makes recommendation of salary grading based on schemes of service and provides guidelines for the framing of these schemes of services. All posts should be filled in strict adherence to the scheme of service and it is management who is responsible for filling vacancies in new grades or existing grades

according to the needs of the organization. The PRB does have any say in matters relating to filling of vacancies.

2. In the present case the recruitment was made on the basis of a scheme of service which prevails since 1993 which is the job specification at the CWA for the post of Senior Clerk. The qualification required for the Post of Senior Clerk is *“By the selection from the grade of Clerk having at least three years’ experience on the basis of written and oral tests.”*

3. The PRB makes recommendations to parastatal bodies.

4. At page 2 of the report which has been submitted to the Tribunal there is a comparative table which shows that the post of Senior Clerk and that of the Executive officer are comparable. Reference to the middle level is in the middle level of the cadre, and not in the organization. The entry grade for clerical cadre in CWA is the Clerk, whereas in the Civil Service it is the Clerical Officer; the next promotional level is the Senior Clerk in CWA and Executive officer in Civil Service. The promotion exercise is by selection on the basis of written and oral test for Clerks at the CWA, and in the Public Service it is by a competitive examination conducted by the Public Service. The post of Senior Clerk in the CWA has now been restyled Executive Officer; both posts have the same salary scale on account of the qualification requirements, the mode of recruitment and the duties and responsibilities which are more or less identical, and are claimed to be identical.

5. It is important that competitive examination be carried out for the promotion from Clerk to Senior Clerk because of the duties, the roles, the functions and the level of responsibilities which demand that the better qualified be selected for the job.

6. At page 111 of the PRB Report 2003, under para 14.3.10, it is stated that the grade of Senior Clerk falls in the middle level of the cadre. The PRB has expressed this view on account of the fact that it is in direct relation to the role, the responsibilities and duties of the grade that the Executive Officer in Government would be required to do

7. The scheme of service for the post of Senior Clerk prevails since 1993 and there has been no change. Changes in the scheme of service should follow procedures established by the Ministry of Civil Service Affairs which include discussions with the Union, reference to the PRB, parent ministry, Ministry of Civil Service Affairs before it is officialised after agreement by all parties.

8. With reference to the grievances of the Applicants, Mr. Jeebodhun said that in the Civil Service promotion is by competitive examination, so there should also be a competition to select the best ones for the next level of Senior Clerk.

9. Under cross examination, Mr. Jeebodhun confirmed that in the clerical cadre, the entry grade is the Clerical Officer, the middle grade is the Senior Clerk and the top grade is the Principal Clerk. The Senior Clerk is at the middle level of the clerical cadre. With

regard to the position of the Clerk in the overall organization, he said that the Clerk may or may not be in the lower level, but it is the entry level.

10. The PRB regime governs terms and conditions of service in the CWA, Civil Service and other sectors. Once PRB recommendations are accepted the CWA and other sectors involved must amend the different schemes of service in line with the recommendations under the supervision of the Ministry of Civil Service Affairs.

11. The CWA is not in contradiction with the recommendations of PRB 2003. It is in line.

12. With reference to para 1.1 of Recruitment and Selection Procedures, Mr. Jeebodhun stated that grade to grade promotion does not necessarily mean automatic promotion; it may be by selection as well. He, however, agreed that paragraph 1.1 means that the CWA shall take into account qualifications, experience, and merit before seniority in all cases, except in case of grade to grade promotion.

13. With reference to paragraph 1.2 (b) and Appendix F which is mentioned there in, Mr. Jeebodhun agreed that post no. 11, Principal Secretarial Clerk and Senior Secretarial Clerk is the Clerical Cadre. He agreed that according to the document under reference, promotion is grade to grade but pointed out that the Scheme of Service provides otherwise. He also said that in Appendix F, no.11, there is only one grade, the Principal Clerk. Grade to grade is from the Senior Clerk who will be promoted to Principal Clerk. Mr. Jeebodhun did not answer to the question whether the whole of the Clerical Cadre from the Clerk to the Principal Clerk is mentioned in item 11 of Appendix F.

14. There is agreement that class to class promotion is made through selection and competitive examination. As regards grade to grade promotion, Mr. Jeebodhun stated that it may or may not be by competitive examination.

15. Mr. Jeebodhun disagreed that the written and oral test for promotion of Clerk to Senior Clerk must be a qualifying examination and not a competitive one; he said that it is a selection.

16. In the Civil Service there are many avenues of promotion for the clerical officer.

17. In the Civil Service, promotion from Clerical officer to Special Clerical Officer and Office Supervisor is considered to be a class to class exercise. He then added that it may or may not be grade to grade promotion. Promotion from Clerical Officer to Executive Officer is class to class; from Executive officer to Higher Executive officer is grade to grade, and from Clerical Officer to Assistance Finance officer is Class to Class promotion. From Assistant Finance Officer to Finance Officer, promotion may or may not be grade to grade promotion.

18. Mr. Jeebodhun said that the Clerical officer, Special Clerical Officer and Office Supervisor in the Civil service were not apt to be similar to the Clerical Cadre in the CWA. He also said that he did not know whether there were other avenues of promotion to the Clerical officer in the CWA.

19. In the Scheme of Service for Senior Clerk at the CWA it is written “written test”. The word “competitive” is not written but it means competitive. There is a test; it means it is competition. There are many types of examination. When we mean selection we mean written competitive examination to select the best.

20. The Senior Clerk falls in the middle of the Cadre and not in the middle of the overall organization. The present dispute is concerned with the PRB Report 2003 and not 2008, so that the restyling of the post of Senior Clerk to Executive officer is not relevant.

COMMENTS AND CONCLUSION

COMMENTS

According to PRB Report, para 14.3.3 there are no automatic promotion. There must be as far as possible qualifying examination for grade to grade promotion and competitive examination for class to class promotion. It is understood that a qualifying examination for a promotion or selection takes into account the seniority of the candidate, and that in the case of a competitive examination, only the best ones are selected for the post.

It is the policy of the CWA to improve the quality of its staffing and to maintain a high standard of efficiency; in this connection it benchmarks on the Civil Service and complies with the recommendations of the PRB with regard to Scheme of service, review on pay and grading structures, conditions of service and other related matters under the supervision of the Ministry of Civil Service Affairs.

The debate in the present matter is whether promotion to the post of Senior Clerk (being grade to grade promotion) should be assessed on the basis of a competitive examination, or by a qualifying examination which opens the door for seniority status to be considered. The reasons for this debate are due to the arguments of the CWA which considers the Senior Clerk level to be at the middle level of the Clerical Cadre, and given their Job Specification they should be subject to a competitive examination for promotion as in the case of promotion to Executive level in the Civil Service.

In case of a qualifying examination, the Applicants would have the opportunity to be appointed given their track record and experience. The Applicants in this case have 28 years’ service in CWA as Clerks. During this long period of service they have had the opportunity to work in an acting capacity as Senior Clerks in various sections of the CWA, namely finance, commercial, registry, customer service and billing among other things.

They passed the examination for promotion as Senior Clerks in 1994, 1999 and 2007. When they passed their examinations in 1994 and 1999, they were not appointed as Senior Clerks. Also, it is to be noted that a pass list is valid for a period of one year only according to provision 5.1 of the CWA’s Recruitment and Selection Procedure. With regard to appointment for actingship, it is worth mentioning that such an appointment

is only approved on the delivery of a certificate by the Head of Division to the effect that the officer concerned is or is not the Senior Officer eligible to act and that he or she is fully qualified and competent to perform all the duties of the office.

From the evidence of Mr. Tuyau and Mr. Jeebodhun, The Tribunal is satisfied that the Senior Clerk is in the middle level of the Clerical cadre which comprises of the Clerk at the entry level, the Senior Clerk at the middle level, and the Principal Clerk at the higher level. Moreover, promotion from Clerk to Senior Clerk is a grade to grade exercise. The Respondent has already admitted in their Statement of Case that promotion to the grade of Senior Clerk is a grade to grade exercise.

The restyling of the post of Senior Clerk as Executive Officer and its alignment with the post of Executive officer in the Civil Service took place in 2008 following the PRB Report of 2008. This is considered to be irrelevant as far as the present dispute is concerned which is based on the PRB Report of 2003.

The main documents to which reference have been made by both parties in support of their respective arguments are the Scheme of Service/Job Specification for Senior Clerk and provisions from PRB Report 2003 pertaining to procedure for promotion of Clerks to Senior Clerks. It is submitted that there has been contradictory interpretation of those documents. The relevant paragraphs thereof are reproduced below in order to highlight the contradictory interpretation thereof.

Scheme of Service for Senior Clerks:-

By the selection from the grade of Clerk having at least three years' experience on the basis of written and oral tests.

PRB REPORT 2003

14.3.6:- On the other hand, it stands to reason that grade to grade promotion at levels where officers are expected to perform duties of the same nature requiring mainly increased experience for the performance of the job could be made on the usual basis of experience, merit and seniority. Seniority could also be considered decisive in matter of promotion of lower levels where physical and technical skills can be developed through long practice.

14.3.10(a):-for grades at lower levels, where physical and technical skills can be developed through long practice and for grades with duties of same nature requiring mainly increased experience for the performance of the job promotion could be made on the usual basis on the recommendations of the supervising officer.

14.3.10(e):- Where a selection exercise has been made for one of the levels of a cadre, appointment to the next grade could be made on the basis of seniority.

14.3.6:- *A class to class promotion which involves a complete change in the nature of the job on promotion is already made through a selection exercise and the procedure is not disputed by any party.*

14.3.9:- *We recommend that: (a) class-to-class promotion should invariably be made on the basis of selection; and (b) grade-to-grade promotion should be determined on a case to case basis and the mode of promotion explicitly mentioned in the relevant schemes of service.*

14.3.3:- *In our 1987 Report, we recommended, as a measure to combat the lowering of the standard of performance and efficiency that as far as possible qualifying/competitive examination should be introduced at various levels; qualifying examination for grade-to-grade promotion and competitive examination for class-to-class promotion.*

It was further recommended that examinations for promotion be mainly work related and that, wherever appropriate, attendance at designated courses should be a condition for promotion.

CWA Recruitment and Selection Procedure

1.1 *The Authority shall have regard to the maintenance of the high standard of efficiency and shall take into account, except in case of grade to grade promotion, qualifications, experience and merit before seniority*

1.2(b):-*Promotion shall be made on a grade to grade basis for posts listed in Appendix F, on the basis of qualifications, experience, merit and seniority subject to provisions contained in Appendix B .The posts as listed in Appendix E should be made on the basis of examination and/or interview. The posts of Clerk, Senior Clerk and Principal Clerk do not appear either in Appendix E or F.*

The word 'could' is used in 14. 3.6; 14.3.10 (a) and 14.3.10(e). It is considered that the use of the word 'could' instead of 'should' is to give flexibility to the CWA to act in the best interest of the organization and the employees. For instance in 14.3.9, the word 'should' is used; this is unequivocal, and there is obligation on the part of the CWA to use selection, (meaning a competitive examination) for class to class promotion. It is the same in 14.3.3 "qualifying/competitive examination" should be resorted to even though it is provided that this is "as far as possible".

It is noted that in 14.3.9 the word 'selection' is not qualified and is used alone to mean competitive examination procedures, which confirms the testimony of Mr. Tuyau to the effect that in the administrative jargon the word 'selection' means competition. Mr. Jeebodhun also stated that promotion from Clerks to Senior Clerks is made by selection by means of written and oral tests at the CWA and by competitive examination conducted by the Public Service Commission for Executive Officers in the Civil Service.

According to Mr. Jeebodhun, the words “written test” in annex 3 to mean competitive examination. Here the accuracy of the words used by the Public Service Commission should be underlined; there is no room for interpretation, ambiguity or misunderstanding; the message is clear: Candidates are required to take a written competitive examination conducted by the Public Service Commission.

The Tribunal finds that the recommendation in the PRB report 2003 on grade to grade promotion is not as clear cut as the Applicant would want to convey. In the case of class to class promotion, the recommendations at 14.3.6 and 14.3.9 of the report are clear, and it should invariably be made on the basis of selection. In the case where the class to class promotion involves a complete change in the nature of the job, the PRB goes further and states (recommendation 14.3.6 of PRB report 2003) that promotion is already made through a selection exercise and that the procedure is not disputed by any party. However, in the case of grade to grade promotion, the PRB 2003 in its recommendation 14.3.9 is less clear and states that it should be determined on a case to case basis but that the mode of promotion should be explicitly mentioned in the relevant schemes of service.

The Tribunal finds nothing wrong with the description of the scheme of service for Senior Clerks since ‘selection’ as is clear from the recommendations in the PRB 2003 connotes the idea of competition or competitive examination. Thus once the Respondent decided to go for selection, the basis used, as mentioned in the scheme of service, that is, “written and oral tests” was fully warranted. The only issue is whether the Respondent could go for selection with a competitive examination for promotion to the post of Senior Clerk. At least, it is unchallenged that the post of Senior Clerk is not at the lower level and is at least at the middle level of the clerical cadre which comprises of the Clerk at the entry level and Principal Clerk at the higher level. Recommendation 14.3.10 of the PRB 2003 provides that the selection exercise 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; ... (that is an assessment based on a qualifying examination). This recommendation does not say that competitive examination cannot be used and on the contrary suggests that this is still the rule (in line with the spirit in which the PRB reports have been drafted since at least 1987 to combat the lowering of the standard of performance and efficiency). However, recommendation 14.3.10 of the PRB 2003 merely provides that competitive examination is not necessary in all promotions for middle or higher levels.

Much will depend on the skills required for the job and the PRB 2003 wisely stated the following at recommendation 14.3.8: “we consider that the objective of a proper promotion exercise is the enlistment of the right candidate for the right job.” There is no evidence before the Tribunal that the post of Senior Clerk at the CWA will entail

merely physical and technical skills which can be developed through long practice. It is apposite to note that the post of Senior Clerk is not listed in Appendix F and the Applicant has not deemed fit to challenge this listing. The Tribunal finds that there was no obligation on the Respondent to have recourse to a qualifying examination for promotion for the post of Senior Clerk and that it was always open to the Respondent to have recourse to competitive examination so long as this was reasonable and justifiable in the interests of the institution at large and bearing in mind the nature of the job and the skills required for the job.

The applicants would be wise to make representations to the Pay Research Bureau towards reaching further clarification on the issue *in lite*.

For reasons stated, the dispute is set aside.

The Tribunal awards accordingly.

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(sd) Rashid HOSSEN
President

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(sd) Jean Paul Sarah
Member

.....
(sd) Abdool Feroze Acharauz
Member

.....
(sd) Maurice Christian Aimé Laurette
Member

Date: 26 March 2010