



These have been referred to the Permanent Arbitration Tribunal 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 Employment Relations Act 2008 (hereinafter referred to as “the Act”) now makes provision for such disputes to be heard before the Employment Relations Tribunal:-

Section 108 (Transitional provisions) of the Act at sub-section 10 reads as follows:

*“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 Disputants were present and were assisted by Mr Sibartie, Counsel whilst the Respondent was represented by Mr Puddoo assisted by Mr D.Basset, Senior Counsel. Both cases were consolidated and Disputant No 1 was the first to depose. He stated that there was an industrial dispute lodged by a group of managers at the Ministry of Labour on 30 October 2003. He did not sign on the document declaring the dispute but he was also concerned with the dispute declared. He was informed in writing (copy of letter produced and marked Doc A1) by the Executive Director Human Resources of the Respondent of the setting up of an independent panel / commission to look into the representations made by Managers and to make recommendations thereon. A copy of a letter dated 30 October 2003 sent to the Minister of Labour and Industrial Relations whereby the latter was informed of the intention of a group of Managers to declare an industrial dispute was also produced and marked Doc B1. A copy of a letter addressed to Mr Sibartie whereby he was convened to a meeting in relation to the appointment of an Independent Conciliation Committee was also produced (Doc C1). A copy of a circular dated 8 April 2004 emanating from the Executive Director Human Resources was produced (Doc D1) as well as a copy of a letter listing the terms of reference of the Committee (Doc E1). Mr Sibartie stressed on the fact that these extended to the period as from year 2000 up to April 2004. The Independent Conciliation Committee was set up. Mr Sibartie stated that the Executive Director for Human Resources had made it clear that adjustments in postings will be considered and then adjustments will be made in salaries. He had two grievances; one, in relation to his posting and the second in relation to his salary. His first grievance was resolved following a dispute which had been referred to the Permanent Arbitration Tribunal (case bearing reference RN886/05).

Mr Sibartie had deposed before the Committee, but the Committee did not complete its work within the delay of five weeks imparted to it to come with a report. Mr Sibartie produced copies of two letters in relation to the delay in the completion of the assignment of the Committee (Docs F1 and G1). However, there was, according to him, an interim report. Management then negotiated with the aggrieved managers (as per copies of letters produced and marked Docs H1 and I1) but he was not called for negotiations although he avers that the dispute concerned him as a member of the group of aggrieved managers. Mr Sibartie stated that the Executive Director Human Resources issued a letter dated 5 November 2004 addressed to the secretary of the

union to the effect that in principle agreement had been reached on a number of proposals and that "Once final agreement will be reached between Management and Heads of Division and Heads of Section, Management will consider the representations of Managers who have not to date secured any Head of Division or Head of Section position" (copy of letter produced and marked Doc J1).

Mr Sibartie explained that instead he received a unilateral offer on 28 December 2004 (Doc K1) in relation to proposed increases in salary from July 2003 and July 2004. There was no offer in relation to the period starting July 2000 and apart from the increases mentioned above, there was no other change proposed to his conditions of work. He then produced a document he would have received from his Head of Department in relation to amended terms and conditions of employment for non managerial grades (Doc L1). Mr Sibartie avers that Managers wrote to Management to query on the terms and conditions of employment and he was then informed in writing that he will continue to be governed by his existing terms and conditions of service (copy of letter produced and marked Doc M1).

He averred that he accepted the offer made to him in Doc K1 but subject to two conditions. The first condition was that his grievances as expressed before the Ruchpaul Committee and through various communications to Management are resolved, and second that new terms and conditions of employment applicable to Management Cadre be attached with the offer made to him. One reason why he inserted the first condition is that the proposed revision was not as from the year 2000 as per the terms of reference of the Independent Conciliation Committee. A second reason was that all his grievances had not been considered and he was still aggrieved with his posting which was settled only after a case was lodged before the Tribunal. He stated that in the year 2002, there was a restructuring exercise and whilst Managers and Executives were being appointed as Heads of Section, he was not appointed as Head of Section. He averred that he should have been appointed but added that, in any event, according to a salary review report drawn up by Mr Lallah, Managers and Executives of whatever grades should all be governed by conditions of service of the Managerial grade.

Mr Sibartie maintained that the conditions of service offered to Heads of Section differ from his whereas, according to him, the terms and conditions of service should have been the same. He averred that he cannot be governed by conditions applicable to non managerial grades, and that if he had signed the unilateral offer made to him, he would have waived his rights to be appointed Head of Section, any salary review for the period year 2000 to 2002 and new conditions of employment offered to Management Cadre. Nevertheless, he averred that he accepted the offer made to him under conditions mentioned above, and he produced a copy of the offer on which he had written the conditions and signed (Doc N1). He then received a letter from the Executive Director Human Resources (copy produced and marked Doc O1) whereby he was informed that in the light of his conditional acceptance of the offer, he was deemed to have refused the offer made to him and to have opted to remain on his existing salary and terms and conditions of work. Mr Sibartie also produced a copy of a further letter he sent to the

Senior Executive, Human Resources of the Respondent as well as a copy of a similar letter sent by Disputant No 2 (Docs P1 and Q1). He received another letter from the Senior Executive, Human Resources (copy marked Doc R1). He stated that from the time the dispute has been referred to the Ministry of Labour in the year 2004, he has not benefitted from any increase in salary except for government compensation.

Mr Sibartie referred to a document produced and marked Doc S2 and stated that the offer made to other members of the Management Cadre was not the same as the offer made to him. The 'evolution' of salary for other members of the Management Cadre is as from the year 2002 and the conditions of employment were not the same. He averred that on 11 March 2005 an offer to act as Head of Section was made to him and that he accepted same but was later told that the offer had been withdrawn. He was instead canvassed to sign the offer already made to him on 28 December 2004.

Mr Sibartie then proceeded to explain the claims as per the terms of reference. A copy of Mr Lallah's report was produced and marked Doc T1. Mr Sibartie stated that he is claiming an increase in salary of Rs 10,000 as granted to officers of the Management Cadre who had been appointed as Heads of Section (under dispute 1(a)) since, as per Doc S2, the salary range offered to the employee concerned in that document was from Rs 46,600 to Rs 87,375 as Head of Section. He explained that he has reproduced the table provided at page 25 of the report of Mr Lallah showing the monthly salary range of the whole Management Cadre (except for the reference to the Chief Executive which was not reproduced) (document produced and marked Doc U1) and he has then used the salary conversion table at page 26 of Mr Lallah's report. The report of Mr Lallah, according to him, takes effect as from the year 1996 for a period of four years. He then added that an increase in salary of 20% was granted by way of an Award to the non management grade effective as from July 2000. This 20% increase was then allegedly granted to the Management Cadre (not a dispute before the Tribunal). This increase was reproduced in Doc U1 and described as an increase of 20% across the board given to the Management Cadre in 2002 with retrospective effect as from July 2000.

In December 2004, the salary of Heads of Section (underlining is ours) evolved as per the second table Disputant No 1 has produced on page 2 of Doc U1. According to him, a conversion was applied whereby Rs 10,000 increase was granted for salary of up to Rs 46,000 and Rs 9000 for salary as from Rs 46,000. He added that in December 2004, a further increase of 16.5% was granted so that for the Management Cadre the salary would now oscillate between Rs 46,600 and Rs 87,375. He thus averred that all Heads of Section were granted Rs 10,000 increase by way of conversion of salary so that he is also claiming Rs 10,000 increase as from July 2002. He states that he should be granted same because as an IT Manager in Operations and Software Development, he was doing 100% the same job as a Head of Section Software Development and Operations. He added that the job descriptions for both posts are identical and that this was admitted by Management in pleadings in the previous case (case RN886/05). The case file of *Mauritius Telecom Employees Association v Mauritius Telecom (RN 886/05)* was produced and marked Doc V1.

Under the alternative point in dispute 1(b), he stated that he should be granted the Rs 10,000 claimed as from 2002 because of the review made for the Management Cadre. If he fails under claim 1(a) and 1(b), he should be granted a reasonable increase in salary as from 1 July 2000. He averred that the terms of reference for the Independent Conciliation Committee mentioned a salary mechanism effective as from the year 2000, and that in the offer made to him, the evolution of salary is only as from June 2002. He produced copies of some of his pay slips (W1 to W6). He then proceeded on his claims under item 2 of the points in dispute and stated that the claims are the same as the increases offered to him in the letter dated 28 December 2004 (Doc K1). His reply thereto was deemed to be a refusal of the offer and he was not even given these increases. The increases as per Doc K1 were offered to all members of the Management Cadre. For item 3 of the points in dispute, he again stated that this was already offered to him in Doc K1 and the offer was made to all Management Cadre. For item 4, he stated that though there was an increase in his salary in the year 2004 and he was granted the conditions of service of Heads of Section, he stated that there was no other increase in his salary whereas other Heads of Section had obtained an increment in their salary and that he was himself offered an increment in Doc K1 in July 2003. He did not agree that Managers had not been granted the increments and that they were drawing flat salaries. He produced copies of pay slips of an employee – Mr X (Docs X7 to X12). He stated that he wrote to Management to query about increments (copy of letter produced and marked Doc Y1) but did not receive any reply from them. He produced copies of other documents (Docs Z1, Z2, Z3 and Z4) which would show that he had to put up a fight to have a review of his travelling allowances. He produced copies of two letters (Docs AA1 and AB1) whereby the Respondent agreed that any agreement reached between the parties in relation to the previous case RN886 would not hinder the rights (if any) of the Disputants in relation to the present matter.

In cross-examination, Mr Sibartie conceded that in the year 2002, he was a Manager and that the employee he referred to in Doc S2 was a Head of Section. It was put to him by Mr Basset that he is claiming benefits which had only been offered to Heads of Section or Heads of Division because in his mind he should have been appointed Head of Section and he replied in the affirmative and added that he fully deserved to be appointed Head of Section at that time. He agreed that the previous case RN 886/05 was entered because he thought that he should have been appointed as Head of Section. He was reluctant to admit that at some point in time in the year 2002 there was the grade of Head of Section and Manager which existed side by side. He agreed that Management denied that there was an understanding that all “Managers first line” would be appointed as Heads of Section and he accepted that Disputant No 2 and he were not able to secure the post of Head of Section. He stated that he successfully implemented a software project (IMIS project) and that Management acknowledged same. He stated that he applied for some ten posts as Head of Section and that in each case he fully deserved to be appointed. He did not agree that the post of Head of Section was different from that of Manager.

Mr Sibartie stated that he was not reporting to a Head of Section at the material time but to a Head of Division who was Mr Bissoonauth. He stated that he did not know about

the requirements for direct appointment as Head. He added that he did not have any direct appraisal with his immediate Head. On 28 September 2005 he declared a dispute through the Mauritius Telecom Employees Association but did not then raise any issue concerning his earnings. The Ruchpaul Committee was to consider his posting first and then adjust his salary accordingly. He averred that there was no proper salary scale for Managers and for Heads of Section and Heads of Department in the year 2003. When he received the offer of 28 December 2004 (Doc K1), it was clear to him that he was not getting money as from the year 2000. On 17 January 2005, he made a counter offer to Management in the light of his two conditions. He did not raise the salary issue when the dispute in case RN 886/05 was lodged because he was not informed by Management of what would happen to the Ruchpaul Committee.

Mr Sibartie agreed that annual increments are granted by the Respondent on the basis of performance. He stated that Mr X was always attached to the Network Department and that he could not say if the latter was given additional responsibilities. He stated that if Mr X was granted an increment because of additional duties assigned to the latter, then he too was given additional duties and he wrote a letter (copy marked Doc Y1) to seek explanation as to why he did not get any increment. He has requested a reply since March 2007 and until now there has been no reply. He conceded that no documents were produced however to show that he was given additional responsibilities. Mr Sibartie stated that in the years 2002, 2003 and 2004 he was an IT Manager and had not been appointed Head of Section. He refused the job title, Manager – Information System in the Commercial Department because, according to the new Management structure, the offer should have been for a Head of Section position. The grade of Manager and Head of Section is however the same according to him. He referred to the Statement of Case of the union in case RN 886/05 to support this. He however accepted that in the year 2003 Mr Shashi Puddoo confirmed to him that he was posted in the Commercial Department as Manager – Information Systems with the same terms and conditions as IT Manager. He also ventured to say that the selection exercise for Heads of Section was a bias one.

In the year 2005, Mr Sibartie moved to the Quality Programme Department where he was given additional responsibilities. He stated that in the period 2004/2005, there was already someone else occupying the post of Head of Section, Software Development and Operations and that he is not contending that there should have been two similar positions at the Respondent or that he should have taken the place of that other person. He maintained that as IT Manager Software Development and Operations, he was doing the same job as a Head of Section Operations and Software Development.

In re-examination, Mr Sibartie stated that the person who was in the year 2002 appointed Head of Section Software Development and Operations, was in fact his junior. He stated that (previously) he was heading the Department Software Development and Operations. He averred that he did not receive any additional increase for additional duties he carried out, and that though he had asked Management about same, Management did not reply to him. He stated that Management however appreciated his work for the IMIS Project and thanked him for his

effort and he was granted a one-off allowance of Rs 10,000 for his personal contribution to the project. He produced a copy of a letter to that effect (Doc AC1). He also produced a copy of a circular addressed to all Heads of Department from the Human Resource Advisor of the Respondent (Doc AD1). Mr Sibartie stated that he thought that once the case in relation to posting lodged by the union was resolved, his claims concerning salaries would be settled. He added that Mr Puddoo had informed them that the salary issue would be disposed of in the light of the outcome in case RN 886/05. He referred to Docs R1 and P1. He averred that there was no circular informing employees how the selection exercise was to be carried out. To a question put by Mr Basset through the Tribunal, he stated that Head of Department is a job title and the corresponding grade is Executive Director. A Head of Department does not become an Executive Director.

Disputant No 2 then deposed before the Tribunal and he stated that he concurs with what Disputant No 1 has stated before the Tribunal. He produced a copy of a letter dated 29 November 1993 emanating from the Respondent (Doc AE1) and averred that in 1993 he formed part of the upper Management Cadre of the Respondent. He produced a copy of another letter dated 28 December 1999 (Doc AF1) addressed to him in relation to recommendations of the salary review committee on pay and terms and conditions of employment for Management grades. By way of a letter dated 27 December 2000 (copy produced and marked Doc AG1), Mr Gopee was informed that in line with the recommendation of the Lallah salary review committee, his salary was revised to Rs 33,000 as from 1 July 1999. Mr Gopee then produced a copy of a letter dated 16 March 2005 which he wrote (Doc AH1) and a copy of an assessment centre feedback report (Doc AI1) drawn following his performance appraisal. He also produced a copy of an appraisal carried out by his immediate superior, Mr Charles Gueret, who was then occupying the post of Head of Commercial and Business Development (Doc AJ1). He stated that as per Doc AJ1, his work has always been above expectation and that he was in fact replacing the Head of Division. He then produced copies of his payslips (Docs AK1 to AK6). He has obtained an increase of about Rs 1600 over a period of six years.

Mr Gopee next produced copies of letters dated 29 January 2004, 2 April 2004 and 28 December 2004 emanating from the Respondent and addressed to him (Docs AL1, AM1 and AN1 respectively). He also produced a copy of the last page of the offer letter where he has signed and written a note whereby his 'acceptance' was subject to two conditions (Doc AO1). Mr Gopee stated that ever since the dispute arose in October 2003 up to the end of 2004, Management had created an expectation that their grievances would be considered and resolved. He produced a copy of a letter dated 8 April 2004 from the Executive Director Human Resources (Doc AP1). Mr Gopee expected Management to hear his representations since there was such an undertaking in relation to Managers who had not secured Head of Section/Division positions. He also produced a copy of a letter he received from Management whereby he was informed that he is deemed to have refused the offer in the light of his conditional acceptance (Doc AQ1) and a copy of another letter he received from the Senior Executive Human Resources dated 26 February 2007 (Doc AR1). Next, he produced a

copy of the declaration of dispute made to the appropriate Honourable Minister and which declaration he has signed along with several other parties (Doc AS1).

Disputant No 2 stated that he formed part of the Management Cadre since 1991 and that he was performing 100% of the duties of the position equivalent to a Head of Section position as from 1991. In 1991, he was Regional Manager (South) and in 1995 he was posted as Technical Manager (in Cellplus with job title Head of Technical after sales). He then averred that the post of Regional Manager was in fact redesigned as Head of Technical Services Section. Following the restructure exercise, he applied for a Head of Division post but was not selected after he attended an interview. He also applied for various Head of Section posts but was not selected. He was not informed how the selection or appointment would be carried out before he made applications for these posts.

Disputant No 2 stated that he has had no adverse reports and has been granted same increments as offered to Heads of Section. He thus stated that he deserves the increase of Rs 10,000 he is claiming under item 1. He stated that even if technically he was not appointed Head of Section, he was doing the same job as a Head of Section and thus should receive the said Rs 10,000 he is claiming. He added that some workers have been appointed Head of Section on the basis that they were doing 70% of the work in that position.

Under items (2) and (3) of the terms of reference, he agreed to what Disputant No 1 had deposed before the Tribunal. If he had accepted unconditionally the offer made to him and which satisfied only part of his grievances, he would not have been able to enter any case against the Respondent on matters still unresolved to his satisfaction. Under item (4) of the terms of reference he averred that he was assigned additional responsibilities and was doing them as is apparent from Doc AJ1 and that there was nothing adverse against him concerning his performance so that the 2 to 5% increments claimed should be granted to him.

In cross-examination, he agreed that as at February 2002, only the Executive Director had been nominated. He averred that afterwards there were selection exercises and also direct appointments from the post of Manager to Head of Section. In December 2004, he was a Technical Manager and he was offered an increase in salary as per Doc AN1. The offer made was similar to what he is now claiming under items 2 and 3 of the terms of reference. He made counter proposals which were not accepted by Management. He is claiming an increase in salary as from year 2000 on the basis that he should be put in the same position as a Head of Section. He was not a Head of Section but averred he was performing duties corresponding to those of a Head of Section. Initially, Mr Gopee accepted that his grievance was that though he was a manager in the establishment he had not been appointed either as Head of Division or Head of Section but then he stated that this was in fact the dispute in the previous case RN 886/05 and that he has now been given the relevant posting. His grievance is that the back pay issue has not been solved. He had some difficulty to explain why he was asking for the back pay and stated that he was doing all the work of the Head of



Division whenever the latter was out of the office, and that he deserved to be compensated for same. He however never requested for compensation for replacing his superior.

Disputant No 2 did not agree that no offer for Head of Section was ever made to him by Mr S Puddoo and then withdrawn. He averred that such an offer was made at a meeting attended by one Mr Peermamode, Mr Puddoo and himself. He then stated that in fact there were two meetings (and not one) which were attended by the same persons he described earlier. Mr Peermamode, who no longer works for Respondent, was a Head of Division though not in Mr Gopee's Division. Mr Gopee agreed that the Respondent never implemented the Lallah report but used only a few proposals of Mr Lallah. He stated that case RN 886/05 has been withdrawn after he has been offered the post of Executive under a fixed-term contract of three years. He has however reserved his right in relation to his claims in the present matter.

In re-examination, Disputant No 2 averred that in the year 2005, one Mr Gobin who was his junior was appointed based on the fact that he was performing 70% of the duties of the post of Head of Section. When asked if there was any selection process, he merely stated that there was an advertisement for the post of Head of Division and the appointment was instead made for Head of Section.

Mr S Puddoo then deposed on behalf of the Respondent and he stated that a new organizational structure was introduced at the Respondent in November 2001. He stated that the procedure for appointing Heads of Division was essentially through selection exercise. The positions were advertised and there was an interviewing panel. The same procedure was followed for Heads of Section. He stated that both Disputants applied on several occasions for positions as Heads of Section or Heads of Division and were called by the interviewing panel but were not selected. They remained as Managers. He stated that Heads of Section had different remuneration packages from Managers. He stated that the note issued by Mr B Wright (Doc AD1) did not apply to Managers like Disputants. Mr Puddoo was referred to the pay slips of Mr X (Docs X7 to X12) and he stated that they referred to a Manager in Network Department. He stated that Mr X was on personal salary and there were periodical reviews of his salary which could be construed as increments. He confirmed that the latter had been assigned additional responsibilities. Mr X's immediate superior had been appointed to a higher position and Management considered that Mr X did not have the required level of experience to take the higher job. Mr X was assigned additional responsibilities and was thus given an opportunity to perform and to be assessed.

Mr Puddoo stated that the Head of Section is a higher grade and carries higher responsibility than that of a Manager. He did not agree that the Disputants were doing exactly the same job as a Head of Section in their respective positions. He stated that the Disputants persistently requested to be informed of the fate of the offers made to them so that Management decided to invite them for a meeting. He did not make any offer to the Disputants and the latter were explained that there was a selection exercise carried out and that they had not been selected for appointment as Heads of Section.

Mr Puddoo stated that it cannot be correct that letters of offer were issued by Management to certain Managers in December 2004 without waiver clauses. He was referred to Doc S2 and he stated that it is a letter which he issued to an employee containing terms and conditions which were being offered to a Manager who had not secured appointment as Head of Section. He read a waiver clause inserted in the document and stated that this clause is inserted in all letters of offer issued.

Mr Puddoo stated that Disputant No 1 is an Executive since 1 August 2007 and that Disputant No 2 is an Executive since 1 September 2007. He said that there is no ground for the request made under item 1 of the terms of reference since the Disputants had not been appointed Heads of Section. Under item 2, he stated that he saw no relevance in granting the increase sought since the increase referred to was granted to Heads of Section. Under item 3, he confirmed that the 16.5% salary increase was proposed to the Disputants in an offer dated 28 December 2004 and that the latter refused the offer. In relation to item 4, he stated that the claim cannot stand since the Disputants had refused the offer made to them on 28 December 2004.

In cross-examination, Mr Puddoo stated that Doc A1 was sent as a letter of information to all Managers and that Mr Sibartie was at that time a Manager. Mr Puddoo explained that following the new structure approved by the Board of Directors in the year 2001, it was decided that all positions except for the Executive Director, Human Resources were to be advertised internally. The Board also gave a mandate to Management in exceptional cases where there was only one incumbent performing a particular function to consider the latter without having to go through the selection process. He averred that the new structure and the modes of appointment, that is, selection or direct appointment were made known to the Management Cadre. He could not say however if this was in writing. He conceded that part of the process in the rolling out of the new organizational structure was done before he joined the Respondent. There was ample communication from Respondent and he did not agree that the Disputants were never made aware of how the selection was to be carried out.

Mr Puddoo agreed that Mr Sibartie was Manager of Software Development and Operations in the year 2001 and beginning of 2002. He added that Manager of Software Development and Operations and Head of Section Software Development and Operations are two distinct positions. Mr Puddoo explained the new structure and stated that since the positions were all new positions, the existing Management Cadres had to apply for these positions and participate in a selection exercise. All the positions in the new structure were to be offered on fixed term contracts so that successful candidates had to forego their permanent and pensionable positions. There was a case entered before the Judge in Chambers in relation to this restructuring exercise and there was an agreement between the parties before the Judge in Chambers to the effect that Managers who decide to stay on establishment will be allowed to do so but this did not in any way stop Management from implementing the new structure. He agreed that initially the Board of Directors and Management wanted all incumbents in the new structure to be on fixed term contracts but Management could not go against the agreement reached before the Judge in Chambers. It was put to Mr Puddoo that

Managers who agreed to go on contract were granted generous salaries compared to equivalent Managers who were on establishment, and he explained that those who accepted considered it to be a fair retribution for what they were expected to do in terms of responsibility whilst foregoing the very principle of permanency of employment. He agreed that for Head of Section positions, the Disputants could remain on the establishment if they wished. He stated that in the new structure, seventy positions in all were provided from Chief Executive to Head of Section. He stated however that there were more Managers in the old structure than in the new structure. Despite lengthy cross-examination by Mr Sibartie in his attempt to show that the bulk of the management of the Respondent remained more or less the same with a few changes here and there, Mr Puddoo maintained there were changes and that the company was evolving. He, very importantly, stated that even if the position advertised in the new structure was one of Head of Section on contract, employees could still choose to stay on establishment if they so desire except that the terms and conditions should then have been different.

Mr Puddoo agreed that in the earlier case (RN 886/05), paragraph 12 of the affidavit of the trade union where it was averred that the job description of the IT Manager Software Development and Operations is identical to the job description of the Head of Section Software Development and Operation was admitted on behalf of Respondent. He even agreed that the one who was going to be appointed as Head of Section (in the new structure) was going to do the same duties as Mr Sibartie was doing up to that time. Mr Puddoo explained that the position of Head of Section Software Development and Operation was advertised in the year 2002 since there were in the company a number of people with the required profile for that position. He stressed on the fact that this was a new position with new terms and conditions. He agreed that the Ruchpaul Committee was set up to look into the grievances of the officers and that the rights of the Management Cadre were to be looked into as acquired rights. Mr Puddoo stated that at the request of aggrieved Managers, Management started direct negotiations with them. He stated that Management was not negotiating with the trade union but with representatives of the aggrieved Managers and he stressed on the fact that negotiations were being held globally for the aggrieved Managers and not for particular groups such as Heads of Section or Heads of Division. He added that eventually offers were made to other aggrieved Managers who were neither Heads of Section nor Heads of Division.

Copies of notes of meetings held between Management and representatives of aggrieved Managers were produced and marked Docs AT1, AU1 and AV1. Mr Puddoo agreed that there was no direct negotiation with Disputant No 1. He did not agree that the Disputants had accepted the offer of the increase made to them and he averred that this was a "qualified refusal" or refusal. Mr Puddoo maintained that all offers made to Managers were made with the same waiver clause as in the case of the Disputants. Copies of letters of offer made by the Respondent to three employees were produced and marked Docs AW1, AX1 and AY1. Mr Puddoo explained that though there are two letters for each employee concerned, these do not amount to two separate offers made to the same employees. The second letter dated 6 April 2005 in each of the three cases is merely a consolidation of the initial offer made to each of them in the light of a

number of clarifications sought by the relevant employees. In each of the letters of offer dated 6 April 2005, there was no waiver clause.

Mr Puddoo agreed that item 3 of the terms of reference of the Independent Conciliation Committee referred to determining the salary as from year 2000 and that no offer was made to the Disputants for the period starting as from year 2000. The Disputants have not benefited from any increase from the Respondent for the period 2002 to 2006 save for statutory compensation. He agreed that Mr X has benefited from an increase in salary in the tune of some 50% over a period of five years and that the latter was in the same grade as the Disputants in the Management structure. Heads of Section had benefited from an increase of Rs 10,000 in their salary in the year 2002. Mr Puddoo was referred to Docs P1 and R1 but he did not agree that the outcome in the previous case (RN 886/05) would have an implication on the present case. He added that in the case of Mr X the duties of the latter evolved so that this would explain the increase in the latter's salary. The additional duties assigned to Mr X were of a temporary nature. He stated that it was possible that Mr Gopee replaced Mr Gueret when the latter was abroad, but he added that Mr Gopee did not benefit from any increase in salary because the replacement was for a short period of time. He did not agree that the report of Mr Lallah would govern the Management Cadre of the Respondent. He averred that only part of the recommendations in the report were implemented and that the recommendations in the report have not been publicly declared as being the terms and conditions of employment governing the employment of Management Cadre. According to him, there were personal contracts and each member of Management Cadre was made an offer and given specific conditions. He agreed that if a staff was doing more than 70% of the duties in the new post, he could be recommended and that this was done in a few cases. A recommendation from the Head of Department is required however and in the case of Disputant No 1 there was no such recommendation. He had a personal discussion with the relevant Head of Department on this issue.

Mr Puddoo averred that as far as he recollects, no offer was made to the Disputants for Head of Section posts. He added that all offers are made in writing. A meeting was held with the Disputants and the latter were only informed that Management would consider the matter. In re-examination, he stated that the Disputants did not benefit from any increase in salary, unlike Mr X, because they were not shouldering any additional responsibilities.

Counsel Mr Sibartie then submitted that the Respondent, as opposed to the Disputants, has not produced any document to enlighten the Tribunal. He observed that important decisions concerning the career of management staff were taken verbally and not recorded. He referred to the stand of the Respondent in case RN 886/05 concerning the job description of Manager of Software Development and Operations and Head of Section Software Development and Operations. He referred to the letter of grievance from the Disputants and the reply (Docs P1 and R1) received from the Respondent to the effect that the Respondent will stand guided by the decision of the Tribunal in case RN 886/05. In relation to the terms of reference of the present matter, he submitted that

the claim under paragraph 1(a) arises because Disputant No 1 was doing all the duties of a Head of Section. Under paragraph 1(b), Counsel submitted that a conversion table was applied to have the salaries of Heads of Section/ Division and had there been true negotiation between the parties, the table should have been extended to the Disputants. Under paragraph 1(c) of the terms of reference, Counsel submitted that the terms of reference of the Ruchpaul Committee was agreed upon and that the salary review was to take effect as from the year 2000 and that it was legitimate for the Disputants to seek an increase in salary as from that period. In relation to the claims under disputes 2 and 3, Mr Sibartie stressed on the fact that these were already offered to the Disputants and that the latter agreed with these except that they could not accept the waiver clause. He observed that according to documents submitted on behalf of the Respondent, there were no waiver clauses inserted in offers made to other workers and that the latter even accepted the offers with conditions. Despite that, improved offers were then made to them. In relation to the claim under dispute 4, Counsel submitted that there had been no increase in salary for the Disputants for the period 2004 to 2007 whilst their purchasing power eroded. He compared this with the salary of Mr X which would have increased.

Mr Basset submitted that the claims under disputes 1(a), 1(b) and 1(c) are based on salaries earned by Heads of Section/ Heads of Division whereas the Disputants were not Heads of Sections but only Managers. It is only when they are appointed as Executives through a selection process that they can have the same package as Heads of Sections. He stressed on the fact that the issue before the Tribunal is not whether the Disputants should have been appointed as Heads of Section but whether they should be paid despite not being appointed. He observed that paragraphs 13 and 14 (with an averment that the Disputants should have been automatically designated at least as Heads of Section in the new Management structure) of the Statement of Case of the trade union had been denied in the previous case RN 886/05. Mr Basset submitted that the Disputants had to have favourable recommendations from their respective heads and that no such recommendations were obtained. He added that the Disputants made applications but were not selected.

The Tribunal has examined all the evidence adduced and the submissions of both Counsel. One preliminary remark is that the dispute under paragraph 1 of the terms of reference has been drafted under paragraph 1(a) or alternatively under paragraph 1(b) or still alternatively under paragraph 1(c). This inevitably creates the impression that the Disputants do not know on which foot to stand and that whilst there is a 'claim' that the Disputants should be granted an increase in salary of Rs 10,000 with effect from 1 July 2002, the Disputants are also contending (though in the alternative) that they should be granted a reasonable increase in salary as from July 2000 or otherwise. It is also apposite to compare dispute 1(a) and the alternative dispute 1(b). The terms of reference (similar terms for the Disputants) under dispute 1(a) and 1(b) read as follows:

- 1(a). *Whether Mr( ....) should be granted an increase in salary of Rs10,000 with effect from 1 July 2002 as granted to officers of the Management Cadre who had been appointed as Heads of Section, or otherwise.*

*Or Alternatively:*

1(b) *Whether Mr (...) should be granted an increase in salary of Rs10,000 with effect from 1 July 2002; or otherwise.*

Under dispute 1(a), there is a 'claim' for an increase in salary as from 1 July 2002 and this is based on the increase allegedly granted to officers of the Management Cadre who had been appointed as Heads of Section. Under dispute 1(b), curiously we have the same 'claim' except that no basis is suggested for such an increase. The submission of Counsel Mr Sibartie on this dispute is very vague and he submitted that there was a conversion table applied to have the salaries of Heads of Section / Division and if there was true negotiation between the parties, the conversion table should have been extended to the Disputants. The Tribunal is left in the doubt as to why this should have been the case.

The Tribunal will first deal with the dispute under 1(a) of the terms of reference. It is not disputed that the Disputants had not been appointed Heads of Section in the year 2002 or afterwards and that they have both been appointed Executives (on contract) only after the present matter has been referred to the then Permanent Arbitration Tribunal (referral on 14 May 2007). The previous case RN 886/05 (original file produced as Doc V1) may be can shed some light at this stage. The dispute was between the Mauritius Telecom Employees Association and Respondent and the terms of reference in that case read as follows:

*"Whether Messrs. P. Gopee and R. Sibartie should be offered appointment as Head of Section on the same terms and conditions prevailing for those on permanent establishment."*

The matter was referred to the then Tribunal on 22 March 2005. The Tribunal did not have to deliver an Award in that case since Mr Sibartie who was also appearing for the trade union in that case informed the Tribunal on 1 August 2007 that the matter had been settled to the satisfaction of the parties concerned. At an earlier sitting, Mr Basset had informed the Tribunal that Mr Sibartie had been offered employment in an executive capacity on a contractual basis and that the latter had signified his acceptance to the terms and conditions of the offer made to him. The matter was not disposed of on that day as the case of Mr Gopee had not yet been disposed of then. Since there was no Award, and no document witnessing the agreements reached was filed, the Tribunal is unaware of the terms and conditions agreed upon by the parties. The case of the Disputants before us, however, is not that they had been appointed with retroactive effect or that they are entitled to the increases in salaries as per the agreements reached between the parties. The present disputes are in relation to increases in salary as from July 2000 or July 2002, and onwards. Counsel for Disputants laid stress on Docs P1 and R1 but Doc R1 is not helpful to Disputants' case. Had there been an Award from the Tribunal in case RN 886/05 to the effect that the Disputants should be offered appointment as Head of Section, this would have been a different matter and depending on the relevant material date of the appointment, some issues raised in the present matter could have been sorted out between the parties.

Case RN 886/05 has no bearing on the present matter the more so in the light of the manner in which that case has been disposed of.

The simple and obvious answer to dispute 1(a) is that the Disputants had not been appointed Heads of Section or Division in July 2002. The increase in salary of Rs10,000 was granted to officers who had been appointed as Heads of Section and the Disputants have no right whatsoever to this increase when they were not appointed Heads of Section.

Under the alternative dispute 1(b), the Tribunal assumes that the 'claim' for the increase in salary of Rs 10,000 (again as from 1 July 2002) is based on any reason which the Tribunal may otherwise find valid. The Tribunal will certainly not delve into the issue whether the recruitment process for Heads of Section was wrong or whether any of the Disputants should have been appointed as Head of Section. This would have been within the province of the Tribunal in case RN 886/05 but falls outside the terms of reference in the present matter. In any event, even if officers could be appointed as Heads of Section without a selection process if they were doing 70% of the duties corresponding to the relevant post of Head of Section, there were conditions which had to be met. They had to be recommended by their respective Heads and in this case none of the Disputants were so recommended. Also, Mr Puddoo has given a valid explanation which has not and could not be disputed, that is, that there were other candidates within the Respondent who were properly qualified for the post of Head of Section Software Development and Operations so that eventually there was a selection exercise. Mr Gobin, who is averred as being the junior of Disputant No 2 was appointed based on the qualification that he was performing 70% of the duties of a Head of Section. The validity of this appointment is not within the province of the Tribunal and there is no evidence before us that Mr Gobin was not performing the required threshold of duties or that he was not recommended.

The only argument which might be put forward to justify an increase in salary of Rs 10,000 under dispute 1(b) is that the Disputants were performing the same or all or most of the duties of Heads of Section. In the case of Mr Sibartie, there was a Head of Section appointed and Mr Sibartie conceded straightaway that there could not be two Heads of Section. Within the new structure, there were in fact both Heads of Section/ Heads of Division and Managers. Whatever may be the arguments of Mr Sibartie in relation to the performance of duties before the appointment of the Head of Section Software Development and Operations, these would not hold once the latter was appointed. Also, remuneration does not depend solely on scheme of duties and very importantly one has to consider conditions of service. In this case, evidence has been adduced to the effect that the Disputants wanted to stay on establishment (in permanent and pensionable positions) whilst positions in the new structure were intended to be offered initially on fixed term contracts. Though from the evidence on record in relation to the agreement reached before the Judge in Chambers, someone could be appointed Head of Section and stay on the permanent establishment of the Respondent, no evidence has been adduced to suggest that the latter will or must be subject to the same terms and conditions as those of a Head of Section employed on a fixed term

contract. Mr Puddoo has stated that employees could decide to stay on establishment in which case the terms and conditions should be different. This has not and could not be denied in the light of the element of risk inherent in a fixed term of contract. In our view, Mr Puddoo rightly referred to the fair retribution and remuneration which Managers who have accepted to go on contract must be given for what they are expected to do in terms of responsibility while foregoing the very principle of permanency of employment.

Mr Gopee stated that on numerous occasions he had replaced Mr Gueret, a Head of Division, when the latter was abroad. He never asked for assignment of duties. Though he could ask for assignment of duties if he was properly assigned the relevant duties for sufficiently long periods, Mr Gopee cannot aver that he was doing all or most of the duties of a Head of Section so that his salary had to be increased (permanently) by Rs 10,000 as from 1 July 2002. Also, for the reasons given above in relation to terms and conditions applicable to employees on establishment as opposed to employees on fixed terms of contracts, the Tribunal has no hesitation in finding that the dispute under item 1(b) has to be answered in the negative for both Disputants and their claims are set aside.

Under the alternative item 1(c) of the terms of reference, suffice it to refer to what Disputant No 1 wrote in his own letter (Doc P1). He was referring to item 3 of the terms of reference of the Independent Conciliation Committee which reads as follows:

*“The Committee will consider a mechanism formula to cover salary adjustment with effect from year 2000.”*

He wrote the following:

“It is understood that this substantial increase in salary effective as from July 2002 and offered in December 2004 under the “Implementation of New Salaries, Terms & Conditions of Employment” for Managerial Cadre, has been given in lieu of item 3 of the terms of reference.”

Thus, even Disputant No 1 conceded that no increase had been given as from the year 2000 and that the “substantial increase” was effective as from July 2002. In Doc P1, he even mentioned that Head of Sections were granted an increase in their salaries starting from Rs 9000 effective as from July 2002. The Tribunal is at a loss to follow the arguments of Mr Sibartie and his counsel as to why the Disputants, who had not even been appointed Heads of Section should then be granted increases as from year 2000. Item 3 of the terms of reference of the Committee (which did not complete its assignment) by itself does not entitle the Disputants to an increase in salary. The Disputants had to show that an increase in salary was due to them as from the year 2000 and this they have failed to do. The increase of 20% mentioned by Disputant No 1 as having been given both to the non managerial grade and the Management grade cannot be the “reasonable increase” which the Disputants have in mind under dispute 1(c) the more so that it was in relation to an Award extended to Management grade. The Tribunal has no hesitation in finding that dispute 1(c) should be answered in the



negative for both Disputants in the absence of any justification for the increase sought as from year 2000.

In relation to disputes 2 and 3, the matter is quite different. The increases sought for the periods starting July 2003 and July 2004 are the same increases which were in fact offered to the Disputants by the Respondent as per Docs K1 and AN1. The Disputants have averred that they have accepted the offers but could not agree waiving their rights in relation to their grievances in relation to back pay. The Tribunal has had the benefit of examining copies of the offer letters with handwritten notes and signatures of the Disputants (Docs N1 and AO1). The Tribunal notes that in the documents in the part to be filled by the worker there is already printed a full paragraph in relation to the worker accepting that the offer supersedes his previous terms and conditions of employment or understanding between himself and the company in respect of which he waives all his rights and declares that he has no claim whatsoever arising from such prior terms and conditions of service. Both Disputants have signed the documents but with provisos in relation to past grievances and that terms and conditions applicable to Management Cadre should be attached with the offer. Had the Disputants merely signed the offer document, it is clear that they would have waived their rights in relation to any back pay prior to July 2003. The Respondent has at the instance of Disputants produced sets of documents in relation to letters of offer made to other workers at the Respondent (Docs AW1, AX1 and AY1). In the initial offer letters there is the 'waiver of rights' part to be signed by the worker and in each and every case the worker signed the document on the same day as the Disputants did (17 January 2005) and the three workers concerned have simply cut across the whole of the 'waiver of rights' clause and substituted a whole lot of conditions. As opposed to the case of the Disputants where the Respondent informed the Disputants in writing on the next day (Docs O1 and AQ1) that they were deemed to have refused the offer, the Respondent has had meetings with the other workers and new letters of offer all dated 6 April 2005, which allegedly purported to consolidate the contents of various letters from the Respondent were issued to the said workers with no "waiver of rights" clause this time.

There is no reason on record as to why the 'conditional acceptances' of the Disputants were not treated the same way as for the other workers concerned. The Tribunal notes that much later following a letter dated 27 June 2007 (Doc AA1) from Disputant No 1, the Respondent in a letter (Doc AB1) under the signature of Mr Shashi Puddoo accepted that in a contract of employment which was under offer to Disputant No 1 that the following: "except for the case before the Permanent Arbitration Tribunal – CN RN959 concerning back pay grievance" be added in item 11, which dealt with 'waiver of rights', of that contract. In the light of all the evidence on record including the fact that the Disputants signed the offer letters, the Tribunal finds that the Disputants were all along agreeable with the increases proposed to them for the periods July 2003 and July 2004. The bone of contention between the parties was elsewhere but not in relation to the proposed increases in salary for the said periods. Also, the Respondent in the letters of offer (Docs K1 and AN1) was merely granting a "nominal (underlining is ours) incremental increase in salary in July 2003 and in July 2004" to the Disputants and also extending to them the 16.5% salary increase offered to the Managerial Cadre on

establishment. The Tribunal has no hesitation in finding that the Disputants should be granted all the increases as per items 2 and 3 of the terms of reference.

In relation to the last item of the terms of reference, there is evidence on record that the Disputants have been appointed by the Respondent as Executives on contract in the year 2007. The "claim" under this item would thus run as from July 2005 up to the relevant month in the year 2007. To support this claim, Counsel for Disputants has relied in his submissions on the increases in salary noted on the pay slips of one worker Mr X (more particularly Docs X9 to X12). There is no evidence before us that other workers have also benefited from increases or similar increases in salary. There is no evidence that there was another salary review exercise after the 2004 salary review effective as from 1 July 2005 and which would apply to the Disputants. When the increase in basic salary of Mr X is analysed from Docs X9 and X10, the Tribunal finds that the increase in July 2005 as compared to the basic salary in July 2004 is 28.5% and the increase noted in October 2006 (Doc X11) when compared to July 2005 is 4.5%. The 'claim' is for a yearly increase of 2 to 5% every 1 July as granted to officers of the Management Cadre or otherwise. Mr Puddoo has averred that Mr X was assigned additional responsibilities and he even explained why the latter was assigned such responsibilities after that his immediate superior was allegedly promoted. This is quite plausible and the Tribunal cannot speculate that because the salary of Mr X was increased as it was done for the relevant period, all other relevant officers were granted or had to be granted similar increases. Disputant No 1 did not concede that Mr X was assigned additional duties but he proceeded on the basis that this was plausible. He in turn averred that he was also assigned additional duties but did not receive any increase in salary. He however did not describe the additional duties or mention for how long he would have performed additional duties except for the IMIS project during the period 2001-2002 where he was already rewarded with a one-off payment of Rs 10,000. Mr Gopee though performing the duties of Mr Gueret in the absence of the latter did not request for any assignment of duties.

Also, the Tribunal notes that in the offer letters (Docs S2, AW1, AX1 and AY1) issued to relevant workers, it is specifically mentioned that there will be no fixed annual increment and that an annual salary increase of 2% to 5% may be obtained on the basis of job proficiency (following an assessment). In the letters of offer issued to the Disputants (Docs K1 and AN1), there is no such provision but instead the Disputants have been reminded (for instance by Doc M1) that they will continue to be governed by their existing terms and conditions of service. The Disputants have failed to show that as per their existing terms and conditions of service they ought to be granted an increase in salary in the range of 2% to 5% every 1 July. The Tribunal thus finds that the Disputants cannot claim that they should be granted such an increase. It is apposite to note that the Disputants at no time challenged the "reorganisation exercise" itself. The Respondent in its statement of case under item 4 of the terms of reference has averred that "Claim 4 cannot be entertained as it applies to Management Cadres at the level of Heads of Section/Division on establishment. Managers on establishment receive a flat salary." The Disputants have failed to show that Managers (like them) who have not

secured appointment as Heads of Section/Division are or should be subject to same new terms and conditions as relevant Heads of Section/Division.

Mention has been made vaguely of loss of purchasing power since the Disputants were not granted any increases as from the year 2004 up to the year 2007. Absolutely no figures have been put forward, and the Tribunal finds that the evidence on record is not enough (where the burden of proof was on the Disputants) for the Tribunal to award any increases in the salaries of the Disputants as from July 2005. The dispute under item 4 of the terms of reference is thus set aside.

For all the reasons given above, the Tribunal awards as follows:

the points in dispute as per paragraphs 1(a), 1(b), 1(c) and 4 of the terms of reference are set aside for both Disputants;

the Disputants should each be granted (a) an increase in salary of Rs 2,400 with effect from 1 July 2003 and (b) an increase in salary of Rs 2,400 with effect from 1 July 2004 as granted to officers of the Management Cadre; AND

the Disputants should each be granted (a) 16.5% increase in salary as per the Salary Review of 2004 and (b) 16.5% increase on allowances as per Salary Review of 2004 effective as from 1 July 2004 as granted to officers of the Management Cadre.

**(sd) Indiren Sivaramen**  
**Vice-President**

**(sd) Kumaraswamy Venkatasawmy**  
**Member**

**(sd) Abdool Feroze Acharauz**  
**Member**

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

**7 December 2010**