

EMPLOYMENT RELATIONS TRIBUNAL
AWARD

ERT/RN 41/2013

Before:

Shameer Janhangeer	-	Vice-President
Ramprakash Ramkissen	-	Member
Rabin Gungoo	-	Member
Triboohun Raj Gunnoo	-	Member

In the matter of:-

Mr Jugdis Bundhoo

Disputant

and

Mauritius Cane Industry Authority

Respondent

The present matter has been referred to the *Tribunal* pursuant to *section 69 (7)* of the *Employment Relations Act* by the *Commission for Conciliation and Mediation* (the "*CCM*"). The terms of reference of the labour disputes are as follows:

- (i) *Whether for the period September 2006 until 31 May 2009, I should be drawing an allowance for shouldering all the responsibilities of Deputy Executive Director as per the conditions of service at the Mauritius Cane Industry Authority, (ex- Mauritius Sugar Authority).*
- (ii) *Whether my salary as Deputy Executive/Human Resource Manager should have been computed on the same index as the previous Deputy Director, index of 083.*

The Disputant was assisted by Counsel and the Respondent by State Counsel instructed by State Attorney. Both parties have put in a statement of case in the matter.

The Disputant in his statement of case has averred that he joined the Mauritius Sugar Authority (the "MSA") in 1984 and was appointed Human Resources Manager ("HRM") in July 2003 on a salary of Rs 43,960. In September 2003, as per the *Doomun Report*, the post of Information Scientist and Human Resources Manager were merged and restyled as Human Resources Manager/Information Scientist ("HRM/IS"). He was Officer-in-Charge from May 2009 to 31 March 2010 and was appointed Deputy Executive Director/Human Resources Manager ("DED/HRM") on 1 April 2010 after having cumulated all the duties and responsibilities of the DED since September 2006. He declared three disputes against the Respondent of which the third, relating to the salary of the Disputant as HRM/IS, was settled at the level of the CCM. The two other disputes have been referred to the *Tribunal*.

In relation to the first dispute, the Disputant has notably averred that the post of DED was vacant as from September 2006 to 31 March 2010. The Board agreed to fill same in 2008 and the Staff Committee recommended the appointment of the HRM/IS as DED, a recommendation to which the Executive Director ("ED") concurred to. No appointment was made and the HRM/IS continued to assume all the responsibilities of the DED in addition to his own and also supervising the work of the Technical Sections. He received no acting allowance and was assuming the responsibilities of the DED. In the absence and after the retirement of the ED, he acted as ED and was paid acting allowance as per the terms and conditions of service at the MSA. The Disputant was paid an *ad hoc* allowance of two increments for the period 2006 to May 2009 following a report by Mr Kawol (attached as Annex 2) on the basis that the Board did not think it fit to advertise the post. He contends that it is established practice for employees to draw the acting allowance as per the conditions of service and in this case drawing the allowance on the basis of the recommendations of the *Doomun Report*. According to him, the recommendation of Mr Kawol is not in conformity with that of the *Doomun Report* and he has never submitted himself to same. He is therefore asking for the Respondent to compute the acting allowance from September 2006 until 18 May 2009 for shouldering the responsibilities of the office of DED as per the conditions of service of the MSA.

The second dispute is with regard to the salary offered for the newly appointed DED/HRM, which has been adjusted from Rs 85,245 to Rs 91,758 with effect from 1 April 2010 (as per an email dated 19 May 2011 enclosed as Annex 4). It has been averred that the salary of the DED/HRM carries an index of 0.73 (i.e. Rs 91,758 / Rs 125,000) and as per the

Doomun Report, the corresponding salary carried an index of 0.83 (i.e. Rs 58,000 / Rs 70,000). The two ex-DEDs have retained an index of 0.83 and are drawing their pension on same. A copy of the agreement signed between the ex-MSA and the Mauritius Sugar Authority Employees Union has been attached (Annex 5). He has received additional responsibilities with his appointment in the merged post of DED/HRM and the posts of Financial Manager, Technical Manager and Project Crop Manager have not been filled and provided additional responsibilities as there is no other officer at this level to provide supervision. His appointment as DED/HRM was made on the basis that the appointment would be based on the conditions of service at the MSA. As HRM/IS he draws a total remuneration (inclusive of allowances) of Rs 92,497. Basing on the pensionable index of 0.83, the pensionable emolument of a DED is Rs 103,500. He is therefore asking for the index of 0.83 to be applied for the computation of the salary of the DED/HRM amounting to Rs 103,000 which would restore parity in salary which exists among the ex-DEDs as well as other benefits based on the pension index.

The Mauritius Cane Industry Authority (the "MCIA"), in its statement of case, has averred that the Disputant has been paid an *ad hoc* allowance of 2 increments for the period September 2006 to May 2009 excluding any period whereby he has been drawing any acting allowance for shouldering higher responsibilities following the retirement of the former DED. The Disputant is also being paid a monthly *ad hoc* allowance of Rs 10,000 for duties over and above his normal workload as from 1 April 2010 pending the recruitment of Managers or a salary/organisational review. The Board of the ex-MSA did not at any point in time recommend the appointment of Disputant as DED and it has also been averred that he has no relevant qualification in human resource management and finance. There was no official correspondence from Board or management requesting the Disputant to cumulate the responsibilities of the DED as well as supervising works of the Technical section. With regard to the report of Mr Kawol, it was agreed that the Disputant had affected additional works but not all the responsibilities of the then DED, who cumulated technical responsibilities; and that the recommendation made therein is partly in line with the actual and existing terms and conditions of employment at the Respondent Authority. The Board of the ex-MSA did not take any decision regarding the recommendation made by the Staff Committee for the filling of the post of DED.

As regards the second dispute, the Respondent has notably averred that the salary of the Disputant has been computed in conformity with the *Doomun Report*. The Disputant in his letter of acceptance for the post of DED/HRM did not mention whether or not additional responsibilities have been conferred to the aforesaid post and accepted the nomination unconditionally. The issue raised regarding the index is for determination of pension only and has no relevance to the determination of the normal basic salary of an

employee. Furthermore, in the terms and conditions of employment, which is as per the *Doomun Report*, no reference is made as to whether the salary of an employee is indexed to that of the ED. With regard to the “Pension Scheme for staff of the Mauritius Sugar Authority” at Annex 5 to the Disputant’s statement of case, the Respondent has reiterated that the issue of the index is for the determination of pension only. The two previous DEDs were cumulating the post with other responsibilities and retired according to the index as per the agreement on “Pension Scheme for staff of the Mauritius Sugar Authority” prevailing at the ex-MSA. The Respondent has already recommended the payment of a monthly *ad hoc* allowance of Rs 10,000 for duties over and above his normal work load as from 1 April 2010 pending the recruitment of Managers or a salary / organisational review, payment of which has been effected accordingly. The Respondent has maintained that the salary offered is accordance with the salary schedule of the *Doomun Report* plus any additional adjustments / salary increase as approved by the ex-MSA Board.

The Disputant was called to adduce evidence. He solemnly affirmed as to the correctness of his statement of case. In relation to the first dispute, he stated that he does not agree to the Rs 2,500 allowance of two increments as recommended by Mr Kawol in as much as having taken all the responsibilities of the higher office, he should be paid the acting allowance as per the conditions of service, which is the difference in the two salaries. He produced a copy of the *Doomun Report* (Document A) referring in particular to *clause 40.2.1 (a)* on the issue of acting allowance. He also stated when the substantive ED retired in April 2009, he was the most senior officer and acted as the Officer in Charge at the MSA. He also drew the salary of the ED when the latter was on mission or on holiday. He referred to an organigram attached to his statement of case (Annex 1) showing who was operating in what posts, the ED (up to April 2009) and himself being the only ones operating at the top management level. He was never officially appointed to act as DED, but in 2008 the Staff Committee had recommended that the post be offered to the HRM/IS (the post which he held) as he had been doing all the work of the DED. He produced a letter dated 09.12.2010 from the MSA (Document B) wherein it was stated that the Board had thought to fill this vacant post of DED by appointing the HRM/IS as he had been assuming all the responsibilities. In relation to the contention that he did not have the relevant qualifications for the post, he went over his history of employment at the MSA, where he was appointed as a Documentalist, assumed the post of Information Scientist in a multidisciplinary team; in 2000, the posts of Finance Manager, Technical Manager and HRM were created after which in 2002, the post of DED was created. The then HRM was appointed as DED and he was invited to apply for the post of HRM/Secretary. He produced the letters in relation to his appointment as HRM (Document C, C₂ & C₃). He did not formally give his acceptance to the *Kawol Report*, whose recommendations have been implemented but not *in toto*. He does not agree that as per the *Kawol Report*, he has affected additional works but not all the responsibilities of the DED. There was no salary included in his letter of appointment which

for him would have been as per the conditions of service. He produced a proposition titled "Adjustment in allowance paid for the period September 2006 to March 2009" (Document D). His claim for the adjustment for three years comes to Rs 306,844 based on the indicative figures referred to in his proposition.

With regard to the second dispute, the Disputant stated that he is presently receiving a salary of Rs 91,758 and that his salary should be Rs 103,500 according to the relativity in the *Doomun Report*, i.e. 0.83. The present relativity, being 0.73, is not correct. His salary should therefore be 103,500 instead of Rs 91,758. The relativity is obtained by dividing the salary of the DED over that of the ED in the *Doomun Report*. The pensions of the former DEDs are calculated on the basis of the 0.83 index. The pension is based on the salary drawn and the length of time with the institution. He contends that if he retires, his pension will be based on the salary he is presently obtaining. It is not disputed that the *Doomun Report* is final and binding upon the parties.

Upon questions from Counsel for the Respondent, the Disputant notably stated that he has been paid the *ad hoc* allowance of two increments for the period September 2006 to May 2009; that his salary has been adjusted as from 1 April 2010, the effective date of his appointment as DED/HRM; and that he has been paid an *ad hoc* allowance of Rs 10,000 as from 1 April 2010 for additional duties. The Board never recommended his appointment as DED. He accepted that he has no qualifications in HRM and Finance. He maintained that he did assume all the responsibilities of the former DED. He does not agree that the salary for the post of DED has been computed in conformity with the *Doomun Report* and he accepted the appointment on the basis of the conditions of service and the parity that exists in the *Doomun Report*. He did not agree that the index is for determination of pension only. He also added that he is not planning to retire and still has seven years to go. The index of 0.83 is according to the salary of the DED and the ED.

Mr Leckraj Jhurry, Analyst at the MCIA, was called on behalf of the Respondent and he affirmed to the correctness of the Respondent's statement of case. Under questions from counsel for the Disputant, he notably stated that the *Doomun Report* covered the period July 2002 to end of June 2005; the Board of the MSA granted an increase in salary covering the period July 2005 to end of June 2008, an increase which was phased over three years. There was another increase in salary of 30 % as from 1 July 2008 to end of June 2013. As at March 2012, *paragraph 40.2.1* of the *Doomun Report* regarding acting allowance was still in force. The issue of index has not been raised as per the *Doomun Report*. As per the letter dated 9 December 2010 from the MSA, he agreed that the Board was contemplating to appoint Mr Bundhoo as DED. It is not being disputed that the aforesaid letter is a

document of the MSA although it has been based on information submitted by the Disputant to the MSA. He did not agree to the contents of the letter regarding the HRM/IS having assumed all the responsibilities of the DED. As to the additional responsibilities, although the Disputant was the sole senior officer, there was qualified staff at the lower hierarchies of the ex-MSA. He agreed that although the Disputant has no relevant qualification in human resource management and finance, the MSA offered him the post. He confirmed that the pension of Mr Ramjada was calculated on the ratio of 0.83. The pension of Dr Deepchand, who was earning Rs 103,000, was based on the salary of the ED. If the Disputant were to retire now, it will be on his present salary of Rs 91,758.

Under the first limb of the dispute, the *Tribunal* is being asked to determine whether the Disputant should be drawing an allowance for assuming all the responsibilities of the DED in accordance with the conditions of service at the former MSA (which is now the MCIA since the 19th March 2012) for the period September 2006 to 31 May 2009.

The Disputant, who has been at the MSA since 1984, was HRM at the Respondent Authority since July 2003, post which was restyled to HRM/IS in September 2003. Above him was the post of DED, whose holder Dr K. Deepchand who had retired in September 2006. The Disputant was eventually appointed to the post of DED/HRM on 1st April 2010.

The Disputant contends that he had been assuming all the responsibilities during the period of vacancy in relation to the post of DED. However, he was never officially appointed to act to the said post by the Board of the Respondent Authority during the aforesaid period, although he was recommended by the Staff Committee for the post in August 2008.

After his appointment, in a letter dated 9 December 2010 (Document B), the ED of the Respondent wrote to Mr D. Kawol PAS at the *Ministry of Agro-Industry & Food Security* entrusting him to look *inter alia* into the additional responsibilities following the retirement of the former DED. In relation to this item, in the annexure to the letter, it has been stated:

B. Additional responsibilities following retirement of former Deputy Executive Director (DED)

7. *The former DED, Dr K. Deepchand, retired in 2006 and the post of DED has remained vacant as at date. The Board had also thought to fill this vacant post of DED by appointing the HRM/IS as he had been assuming all the responsibilities. Furthermore, he has also been supervising the Financial and Technical section being the sole senior officer at the MSA level 2 and 3. Despite the fact that the appointment of the DED was not effected the HRM/IS has been assuming all the responsibilities.*

Mr D. Kawol in his report dated 16 February 2011 made the following recommendation with regard to the aforesaid item:

3.2 Additional responsibilities following retirement of former Deputy Executive Director

Dr K. Deepchand retired as Deputy Executive Director in September 2006. However, the post was filled in April 2010. Since the Board did not deem it fit to advertise the post of Deputy Executive Director during the period September 2006 to May 2009, in my opinion Mr Bundhoo cannot claim any acting allowance during that period. However, to be fair to Mr Bundhoo for the additional duties carried out, it is recommended that an ad hoc allowance equivalent to two increments, i.e. Rs 2,500 be paid to him monthly for the period September 2006 to May 2009.

Although the Disputant has received payment of this *ad hoc* allowance as stated, he does not agree to same and contends that he should be paid according to *paragraph 40.2.1 (a)* of the *Doomun Report* whose recommendations in reviewing the pay structures and conditions of employment at the MSA have been effective since 1 July 2002. The aforesaid provision of the report provides as follows:

An employee acting in a higher office shall be paid an acting allowance equivalent to the difference between the initial or flat salary of the higher post and the substantive salary of the officer or equivalent of three increments at the incremental point reached by the employee in his substantive post, whichever the higher, provided the total emoluments of the officer is not less than the initial salary and not more than the maximum salary of the higher post.

The Respondent in relation to this dispute contends that the Disputant was never appointed to act in the post of DED for the aforesaid period and did not possess qualifications in human resource management and finance relevant to the post. Furthermore, despite the abovementioned contents of the letter dated 9 December 2010, the Respondent has maintained that the Disputant has effected additional works but not all the responsibilities of the then DED and that the recommendation of Mr D. Kawol is partly in line with the actual and existing terms and conditions of employment governing employees at the ex-MSA.

The Disputant, on the other hand, has explained how he came to be appointed DED/HRM in April 2010 after having been invited by the Board to apply for the vacant post, although he has acknowledged that he does not possess qualifications in human resources management and finance. He has furthermore maintained that as HRM/IS, he assumed all the responsibilities of DED between September 2006 and May 2009.

In any event, in relation to appointments at the Respondent, the following may be noted from the then *Mauritius Sugar Authority Act*:

8. Special assignments

(1) *The Authority may appoint any person to perform such functions as the Authority may assign to him.*

Moreover, from the *Doomun Report*, the following may be noted on the matter of the appointment/recruitment process (at *paragraph 35.1.1*):

The Authority may employ, on such terms and conditions as it thinks fit such employees as may be necessary for the proper discharge of its functions. All vacancies shall generally be advertised. However for promotional posts or promotional entry posts, the Authority shall in the first instance give priority of consideration to serving employees possessing the required qualification and/or experience.

Furthermore, in respect of the issue of qualifications, the following has been provided for in relation to acting allowance in the report (at *paragraph 40.2.1 (b)*):

An employee shall be paid responsibility allowance which is equivalent to the acting allowance provided employee is fully qualified. Employees not possessing the full qualification shall be paid equivalent amount representing three quarter of the acting allowance.

On the basis of what has been provided for in *paragraph 40.2.1 (a)* of the *Doomun Report*, the Disputant is asking that he should be given the full acting allowance for the period September 2006 to 31 May 2009. Under the *Kawol Report*, he was given an *ad hoc* allowance of two increments for additional duties carries out. The grant of this *ad hoc* allowance is at least recognition of the fact that Mr J. Bundhoo was carrying out additional responsibilities pertaining to the post of DED. Furthermore, following an agreement reached between the parties before the *CCM* on 13 June 2013, the salary of the Disputant as HRM/IS has been aligned inclusive of one increment effective as from 1 July 2003.

Despite the stand of the Respondent that the Disputant was not carrying out all the responsibilities of the then DED who retired in September 2006, the acknowledgement by the Respondent in the letter dated 9 December 2010 (produced as Document B) that he had assumed all the responsibilities of DED is quite clear and significant on this issue and does not give credibility to the stand taken by the Respondent on the dispute. Furthermore, it

cannot be overlooked that the Board did eventually appoint Mr J. Bundhoo to the post on 1 April 2010.

In the circumstances, in view of the fact the Disputant has on his own admission stated that he does not have relevant qualifications in human resources management and finance, the *Tribunal* can only award that the Disputant should be paid acting allowance for the period September 2006 to 31 May 2010 in accordance with *paragraph 40.2.1 (b)* of the *Doomun Report*.

With regard to the second dispute, the *Tribunal* is being asked to decide whether the salary of the Disputant as DED/HRM should have been computed on the same index as the previous DED.

The Disputant in relation to this dispute has contended that his salary as DED/HRM, which has been adjusted to Rs 91,758 as from 1 April 2010 (the date of his appointment as DED/HRM), should be aligned to an index of 0.83, instead of the current index of 0.73 it currently bears. He has cited the examples of two former DEDs, Mr J. Ramjada and Dr K. Deepchand, who according to him are drawing their pension based on the index of 0.83.

From evidence that has been adduced in relation to the dispute, although the index of 0.83 has never been expressly mentioned in the *Doomun Report*, it is not disputed that the 0.83 index has been obtained by dividing the salary of the DED (i.e. Rs 58,000 as per the report) by the salary of ED (i.e. Rs 70,000 as per the report). The current index of 0.73 put forward by the Disputant has been obtained by dividing his current salary with that of the current salary of the ED (Rs 125,000). He is therefore asking that his salary should be Rs 103,500 instead of Rs 91,758 it currently is. He has also stated that he is not planning to retire and has about seven years left to go.

In relation to this issue, the Disputant in his statement of case has referred to an agreement between the MSA and the Mauritius Sugar Authority Employees Union dated 05 March 2001 titled "Pension Scheme for Staff of Mauritius Sugar Authority" wherein it has been agreed that the Pension Scheme for employees of the MSA shall be governed by the rules listed therein. Among the rules listed, a formula has been provided stating that the index of an employee at the time of retirement shall be calculated by dividing the gross salary of the officer by the gross salary of the ED multiplied by a hundred.

The Respondent, on the other hand, has contended that the index referred to by the Disputant is for pension purposes only and not for salary purposes. Furthermore, the Disputant when accepting his appointment to the post of DED/HRM stated in his letter dated 20 April 2010 that he is accepting the appointment on the terms and conditions specified and as may be approved by the MSA.

Although the Disputant is asserting that he is not at parity with the two former DEDs whose examples he has cited, he is in effect asking that his salary be reviewed from what it currently is to Rs 103,500 which will bring him to the index of 0.83 as it was for the previous DEDs.

The *Tribunal* cannot agree with the Disputant that the index is not for pension purposes only, the more so that his evidence has borne out that if he is to retire, his pension will be based on the salary that he is presently obtaining and that the former DEDs are drawing their pension on the 0.83 index. Furthermore, the formula calculating the index being referred in the dispute officially emanates from the agreement on the “Pension Scheme for Staff of Mauritius Sugar Authority” and not from the *Doomun Report*, which is silent on the subject of pensions.

It must also be noted that, notwithstanding the agreement which apparently prevails on the issue of pensions, the MSA is a statutory body listed under the *Statutory Bodies Pension Funds Act* (the “*SBPFA*”) which establishes the Pension Fund in respect of the Respondent Authority, among others, and under which regulations (notably the *Statutory Bodies Pension Funds Regulations 2011*) have been made for the grant of pension benefits as well as the computation of pension and gratuity. It must also be noted that the MSA has now been replaced by the MCI in the *First Schedule* of the *SBPFA* since the coming into force of the *Mauritius Cane Industry Authority Act* on 19 March 2012.

In asking for his salary to be at Rs 103,500 basing himself on the calculation that his index upon retirement would be 0.73 instead of 0.83, the Disputant is in essence asking that his salary be reviewed by the *Tribunal*. This however is a task that was undertaken by the *Doomun Commission*, which came out with its report in September 2003 effective as from 1 July 2002 and notably recommended that it would be in the interests of all parties to have Salary Reviews every five years rather than three years. It is not being contested that the report is final and binding on the parties and it may also be noted that the Respondent has not excluded any future salary reviews.

Indeed, the parties may be referred to what was stated by the then *Permanent Arbitration Tribunal* in its award in *The Central Electricity Board Staff Association and The Central Electricity Board [RN 333 of 1997]*:

The parties concerned should not overlook the fact that there is a wide difference between an Arbitration Tribunal and a Salaries Commission and that a Tribunal should not as a rule substitute itself for a Salaries Commission which has entirely different functions.

It is apposite to note that the definition of a labour dispute in the *Employment Relations Act* has been recently amended (*Act 5 of 2013*) to exclude a dispute by a worker made as a result of the exercise by him of an option to be governed by recommendations made by a salary commission in relation to remuneration or allowances of any kind.

The *Tribunal* has also noted that the Disputant has not been consistent with himself in relation to this dispute in as much as he is now drawing a salary of Rs 91,758 as DED/HRM whereas he has averred, in his statement of case, that as HRM/IS his salary drawn inclusive of various allowances amounted to Rs 92,497. The Disputant has furthermore not put forward the gross salary he is earning as DED/HRM nor whether the allowance of Rs 10,000 for additional duties he obtains is included in his current salary.

In the circumstances, the *Tribunal* finds no reason in favour of the Disputant for his salary as DED/HRM to be computed on the same index as the previous Deputy Director.

The second dispute is therefore set aside.

(Sd) Shameer Janhangeer
(Vice-President)

(Sd) Ramprakash Ramkissen
(Member)

(Sd) Rabin Gungoo
(Member)

(Sd) Triboohun Raj Gunnoo
(Member)

Date: 2nd September 2013