

EMPLOYMENT RELATIONS TRIBUNAL
AWARD

ERT/RN 95/2012

Before:

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|---------------------------|----------|-----------------------|
| Shameer Janhangeer | - | Vice-President |
| Vijay Kumar Mohit | - | Member |
| Denis Labat | - | Member |
| Georges Karl Louis | - | Member |

In the matter of:-

Mr Jean Claude Eugene Madelon

Disputant

and

Mauritius Revenue Authority

Respondent

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

“Whether the pension payable to me, after my retirement from the post of Technical Officer, in May 2008 from the Mauritius Revenue Authority, should have been revised after each salary revision at the Mauritius Revenue Authority, namely the salary revisions of July 2008 and December 2011 and any subsequent salary revision thereafter.”

The Disputant was assisted by Counsel and the Respondent was represented by the Assistant Parliamentary Counsel instructed by the Deputy Chief State Attorney. Both parties have put in a statement of case in relation to the dispute.

The Disputant, in his statement of case, has averred that he joined the Customs and Excise Department in June 1975. He was a Principal Customs and Excise Officer and on 1st of July 2006, he opted to be transferred to the Respondent basing himself on section 2.2.4 of a *Memorandum of Understanding* (the “*MoU*”) of the *Ministry of Finance and Economic Development* (attached as Annex A to the Statement of Case). He retired on 24th May 2008, since when there have been two salary reviews at the Respondent (in July 2008 and December 2011). His monthly pension was not recalculated on the basis of the new salary scales. It has also been averred that on retirement he received a pension in the amount of Rs 17871.85 and his revised pension with the salary review in May 2008 should have been Rs 23393.75; with the salary review of July 2011, his revised pension should be Rs 28368. It has been stated that his colleagues who did not opt to be transferred from the Customs to the Mauritius Revenue Authority (the “*MRA*”) or who had not been offered a position at the *MRA* were favoured with an alignment of their pension to the salary review by the *Pay Research Bureau* (the “*PRB*”). The Applicant contends that the non-alignment of his pension with the salary review suggest that the terms and conditions of his transfer to the *MRA* were less favourable than the pension rights he would have obtained if he had opted to join the *MRA* contrary to section 2.2.4 of the *MoU*. In relying on two previous awards of the *Tribunal*, it is being contended that the pensions paid to retired officers of parastatal bodies such as the Respondent should be reviewed after salary revisions. The report of the *CCM*, where no settlement was reached regarding the present dispute, has also been attached to the Disputant’s statement of case as Annex B.

The Disputant is therefore praying that his pension be reviewed after each salary revision at the *MRA*; that arrears be paid to him by the Respondent as per the salary revisions which took place in 2008 and 2011; and any subsequent pension to be paid in accordance with any subsequent salary review which may take place at the Respondent.

The Respondent, in its statement of case, has notably submitted that a salary review was carried out at the Respondent in 2008 and took effect on 1 July 2008; there was no recommendation in the Salary Review Report to adjust the pension of retired employees and no instructions were given to SICOM (who manages the pension fund of the *MRA*) to revise same; and that it is under no legal obligation to revise the pension payable to the Disputant after each salary review at the *MRA*. It has further been averred that after considering the request of the Disputant and the financial implications involved in any revision in pensions after a salary revision, the matter has been referred to the Board of the *MRA* and is still under consideration. However, no decision has been taken as yet on the issue by the Board of the *MRA*.

The Disputant adduced evidence in the matter stating that he joined the Customs and Excise Department in June 1975, was promoted to Senior Customs and Excise Officer in December 1992 and to Principal Customs and Excise Officer in June 1999. He joined the MRA in June 2006 following an offer to be transferred, whereas some of his colleagues retired straight away. He retired on 24 May 2008 and had he stayed in the Customs, his pension would have been revised. The pension he has been drawing with the MRA since 2008 has remained the same, which is about Rs 17871.85. He still receives the same sum plus cost of living which brings the pension to about Rs 19000. He is asking the *Tribunal* for a revision of his pension calculated on the two salary reviews as well as any subsequent review in the future because this cannot be less favourable than what he would have obtained before his transfer, which is that his pension would have been adjusted with the salary reviews. The Disputant also stated that his pension should be Rs 28368 with the salary reviews at the MRA as well as the arrears he would be due with the pension adjustment. He also added that when he joined the MRA he received an increase in salary. It is unjust and unfair that his pension has not been revised as it has been for his colleagues who have not opted to join the MRA.

Upon questions from Counsel for the Respondent, the Disputant notably stated that prior to joining the MRA, his terms and conditions of service were governed by the *PRB Report*. He joined the MRA and opted to be governed by the terms and conditions prevailing there and being governed by the *MoU* which states on terms "not less favourable". All his other terms and conditions were more favourable. His understanding of "accrued pension rights" is that he will receive his pension after retirement and any subsequent increase that is due as it has been since the *Chesworth Report*. He does not agree that "accrued pension rights" means the pension he has accrued to the point when he joined the MRA. He presently earns a pension of around Rs 19300 and does not agree that he would have earned a lesser pension had he stayed in the public service as he would have benefitted from two salary revisions. He agreed that his colleagues in the public sector retired with a lesser salary than what he earned at the MRA.

Mr D. Sookna was called to depose on behalf of the Disputant. He retired as a Senior Customs and Excise Officer in July 2006 on a pension of Rs 10132.50 and has received successive increases in his pension which is now Rs 16500. He produced a letter from *The Treasury* showing the increase in his pension (Document A). He did not opt to join the MRA and chose to retire.

Mr Vijay Kumar Ramnundun, Director Human Resources and Training at the MRA, was called to adduce evidence on behalf of the Respondent. He affirmed as to the

correctness of the statement of case of the Respondent. He produced a letter dated 9 June 2006 (Document B) wherein the Disputant was offered employment as Technical Officer at the MRA as well as the acceptance of the Disputant dated 29 June 2006 to the offer (Document C). The said post of the Disputant was within the permanent and pensionable establishment of the MRA at Grade 4. He also stated that the pension fund of the MRA is administered by SICOM and put in extracts of the *HR Manual of July 2006 and January 2012* (Documents D & D₁). In relation to the *MoU*, he explained that the MRA increased the salary of the employees transferred; there were the previous salaries, plus benefits, plus an increase of 10 %, top up for tax purposes by around 25/30 % which would be the pensionable salary of the employee at the MRA. With regard to accrued pension rights, he explained that it is whatever each employee in the public sector had acquired up to 30 June 2006 in terms of contributions, pension contributions which were taken over by the MRA and put into the fund managed by SICOM. The MRA contributed the whole amount of the pension of the Disputant until he retired in May 2008. The two salary reviews in 2008 and 2011 at the MRA did not contain any conditions as to revision of pensions. The stand of the Respondent in the present matter is that they are not bound to review or revise the pension of employees following salary review exercises effected at the MRA.

In reply to questions by Counsel for the Disputant, the representative of the MRA notably stated that there is a recommendation in the *PRB Reports* for employees of the public service and parastatal bodies to have their pensions revised. The pension fund was set up concurrently with the setting up of the MRA. On being shown Document A, he agreed that the pension of the Government employee has a ratio of 10 to 16. He also stated that in absolute terms, which are about the money element, the Disputant receives more money from the pension of the MRA than that he would be getting from the public sector. In ratio terms, the pension of the Government employee is better than that of the Disputant. When saying accrued pension rights in relation to the transfer of the employee being not less favourable, the whole amount accrued up to 30 June 2006 is being brought into the Respondent's pension fund; and in terms of pension computation, it will be the same as is obtained in the public sector. Mr Ramnundun also assured that the MRA is still looking at the issue and that there are some 50 to 60 retired employees in the same situation as the Disputant.

In the present matter, the *Tribunal* is being asked to determine whether the pension of the Disputant should have been revised after the salary revisions of July 2008 and December 2011 and after any subsequent salary revision thereafter at the Respondent Body following his retirement as a Technical Officer on 24 May 2008.

In his contention, the Disputant is notably relying on the *MoU* signed by the *Government of Mauritius* and the MRA together with various unions on 13 June 2005, wherein at *paragraph 2.2.4*, the following has been stated:

Where an officer referred to in paragraph 2.2.2 opts to be transferred, and is transferred, to the MRA, he shall be transferred to the permanent and pensionable establishment of the Authority on terms and conditions, including accrued pensions rights, which are not less favourable than those obtained by him before the transfer.

This paragraph clearly provides that that an officer who has opted to be transferred to the MRA, on its permanent and pensionable establishment, shall do so on terms and conditions which are not less favourable than those obtained by him before the transfer. It may also be noted that the aforesaid paragraph has expressly included “accrued pension rights” and it must be borne in mind that the word “accrued” means “be received in regular or increasing amounts”. It may also be noted that *paragraph 2.2.4* has been mostly reproduced in the *transitional provisions* of the *Mauritius Revenue Authority Act* (the “MRA Act”) at *section 28 (3)(b)*.

Furthermore, in the *Supreme Court* case of *Rosemond and Ors v Mauritius Revenue Authority [2012 SCJ 438]*, the following was noted with regard to what has been reflected in *section 28* of the *MRA Act*:

[19] *Nor can it be disputed that the coming into effect of the Mauritius Revenue Authority Act was accompanied by a commitment that the plight of those who joined would not be lesser for the greater sense of security in the civil service which they gave up under the old regime to espouse the new one. That is clear, unambiguous and devoid of any relevant qualification.*

It may also be noted what has been said in the aforesaid judgment in relation to the transfer of employees to the MRA:

[27] *Admittedly, when the applicants joined the MRA, they came to join an entirely new regime. Applicants would, indeed, err if they were to take the view that they still carry some of the baggage from the old regime. Once they moved into the new legal framework, they stood to be governed by the rules regulating the new institution which they had advisedly joined.*

The Disputant has all throughout asserted that since his retirement his pension has remained the same whereas that of his colleagues who did not opt to join the MRA and have remained in the civil service have been revised pursuant to the *PRB Reports of 2008 and 2013*.

It has not been disputed that the terms and conditions of employment prevailing at the MRA, which as per the letter of offer made to the Disputant is as has been set out in the *Human Resources Management Manual*, have not provided for any increase/adjustment in the pension of the retired employees. The excerpt of the aforesaid *Manual* in 2006 produced before the *Tribunal*, states:

727 *The MRA will arrange for the establishment of a pension fund under the Statutory Bodies Pension Funds Act for the provision of a pension to officers of grades 1 to 5.*

Furthermore, from the *Human Resources Management Manual 2012*, the following has been provided for in relation to pensions at the MRA:

728 *The MRA has a Pension Fund for its employees who hold a permanent and pensionable post. A monthly contribution of 12.3 % of an employee salary is made into the Pension Fund with S.I.C.O.M Ltd, of which 6 % is contributed by the employee and 6.3 % is contributed by the MRA. The ceiling may be reviewed as circumstances warrant.*

Indeed, pursuant to regulations (*GN No. 7 of 2011*) made under the *Statutory Bodies Pension Funds Act*, it has been provided that where any adjustment in pension benefits is required following a revision of conditions of service in the public sector or otherwise, the Statutory Body, which in this case would be the Respondent, may direct the company (i.e. SICOM) to pay such corresponding extra amount of pension or make such corresponding adjustments to any pension payable as may be recommended by the Minister responsible for the subject of Finance.

However, although the pensions of retired civil servants have been revised following each *PRB Report*, this has always been following a recommendation made therein and is not established in law. Indeed, the following may be noted from the *PRB Report 2008 Vol. I* (at paragraph 20.1):

Prior to 1987, the pensions of retired public officers were not adjusted in the wake of a salary review. The pensioners were, however, compensated periodically for an increase in the cost of living. However, the Salaries Commissioner, Mr D. Chesworth in his Report of 1988 recommended that, the pensions of retired officers have to be recomputed on the basis of the revised pensionable emoluments of the relevant grades as from the date of implementation of the new salaries. Since then, after each general salary review the same policy was adopted.

The same recommendation, i.e. that the pension of retired public officers should be recomputed on the basis of the revised pensionable emoluments of the relevant grades as from 1 January 2013, has been adopted in the *PRB Report 2013*.

Furthermore, as has been rightly pointed out by Counsel for the Respondent in citing the *Pensions Act*, there is no legal obligation for the pension of an officer retired from the public service to be revised in accordance with an increase in salary.

Counsel for the Applicant has on the other hand cited two previous awards, namely *F.M. Rawat and Mauritius Housing Company Ltd [RN 973 of 2008]* and *V. Pakiry Poullé & Ors and Mauritius Housing Company Ltd [ERT/RN 72/09]* of the *Tribunal* in support of the case for the Disputant's pension to be revised.

In the former case, it was agreed that the pension of the Disputant should be revised and the *Tribunal* awarded accordingly. In the latter case, the dispute concerned employees who had retired under a Mutually Agreeable Retirement Scheme to be found in the report governing their terms and conditions of employment at the Mauritius Housing Company Ltd and the *Tribunal* found that the pensions of the Disputants should have been revised after each salary revision at the Respondent in the same manner as the pensions of other employees who have retired from the company at normal retirement age.

Although in these two cases it was decided that the pensions should be revised in accordance with a salary review at the Respondent Company, the award would be an implied term of the contract of employment between the worker and employer to whom the award applies. It thus cannot be said that the decisions in the two aforementioned cases should be legally binding on the parties in the present matter.

The issue before the *Tribunal* therefore remains whether the pension of the Disputant should be revised in light of the two aforementioned salary revisions at the MRA bearing in mind that the Disputant had been transferred on terms and conditions which are not less favourable than those obtained by him in the civil service. Could it therefore be said that the Disputant is obtaining a pension less favourable than what he would have obtained had he remained in the public sector.

From the evidence that has been adduced before the *Tribunal*, it has not been disputed that Mr J.C. Madelon joined the MRA on 1 July 2006 on terms and conditions that were more favourable to him, his salary being Rs 34843, inclusive of travelling allowance, passage benefits and other allowances available in the public service. It may be noted that as a Principal Customs and Excise Officer, he would have been earning a basic salary between Rs 16500 and Rs 22400 (vide *PRB Report 2003 Volume II Part I*). Despite his claim that his pension would have been more had he opted to remain in the civil service where he would have benefitted from two salary revisions (in 2008 and 2013), he has not put forward any evidence in support of same. On the other hand, the representative of the Respondent has stated that in money terms the Disputant still receives a better pension than what he would have received in the public sector.

The Disputant is also relying on a document produced by a retired Senior Customs and Excise Officer who did not join the MRA, where it can be seen that the pension has increased on a ratio of 1 : 6 since retirement in July 2006. Although this has not been contested, it cannot be said that the monetary value of the pension of the Disputant is still less than what he would have been earning if he had chosen to remain in the public sector. Moreover, it cannot also be disregarded that the representative of the Respondent has recognised that the computation of the pension of the Disputant should be the same as it would be in the public sector bearing in mind that it should be on terms not less favourable than what was obtained prior to the transfer.

The *Tribunal* cannot, in the circumstances, conclude and award that the pension of the Disputant should have been revised in accordance with the salary revisions at the MRA in July 2008 and December 2011 on the ground that it is supposedly less favourable than his terms and conditions of employment, which includes accrued pension rights, before his transfer to the MRA.

The *Tribunal* would however wish to apprise the Respondent Authority, in having regard to good and harmonious employment relations, to see to it that the pension of the worker concerned does not become less favourable than what he would have received before his transfer so as protect and uphold the undertaking given to a civil servant of about 30 years' experience as a Customs and Excise Officer who has opted to join the ranks of the MRA on the understanding that he would be on more favourable terms and conditions of employment.

The dispute is therefore set aside.

(Sd) Shameer Janhangeer
(Vice-President)

(Sd) Vijay Kumar Mohit
(Member)

(Sd) Denis Labat
(Member)

(Sd) Georges Karl Louis
(Member)

Date: 20th August 2013