

EMPLOYMENT RELATIONS TRIBUNAL

ERT/RN 73/13

AWARD

Before:

Rashid Hossen	-	President
Georges Karl Louis	-	Member
Desire Yves Albert Luckey	-	Member
Raffick Hossenbaccus	-	Member

In the matter of:-

Miss Marie Claudette Magdeleine

(Disputant)

And

State Trading Corporation

(Respondent)

**In presence of: (1) Ministry of Industry, Commerce and Consumer
Protection**

(2) Ministry of Civil Service and Administrative Reforms

(3) Pay Research Bureau

(Co-Respondents)

On 30th January 2013, the Disputant reported to the President of the Commission for Conciliation and Mediation the existence of a labour dispute

between herself and the State Trading Corporation (STC) as per **Section 64(1) of the Employment Relations Act 2008** as amended. Conciliation meetings were held at the Commission and no settlement has been reached. The Commission therefore referred the labour dispute with the consent of the Disputant to the Tribunal for arbitration in terms of **Section 69(7) of the Employment Relations Act 2008** as amended with the following terms of reference.

The points in dispute are:-

“1. Whether, Disputant should be paid incremental credits as per her condition of employment, with effect from year 2004, when she joined the IT Division as a Clerical Officer, as a result of the following additional qualifications:

(i) International Advanced Diploma in Computer Studies from National Computer Centre (NCC), UK, acquired in February 2001; and

(ii) Bachelor of Science in Computing and Information Systems from London Guildhall University, UK, acquired in March 2003.”

2. Whether, Disputant should be granted 3 increments on promotion when she was promoted from the grade of Executive Officer to that of IT Technician, with effect from 03 December 2009.”

In her Statement of Case the Disputant avers that she is holder of an International Advanced Diploma in Computer Studies from NCC, UK which she obtained in February 2001 and a Bachelor of Science (Hons) in Computing and

Information Systems from London Guildhall University, UK, obtained in March 2003. The salary of Executive Officer was Rs 12,300 x 300 – 13,800 x 400 – 15,000 x 500 – 16,000 x 600 – 22,000 and the salary of IT Technician was Rs 14,200 x 400 – 15,000 x 500 – 16,000 x 600 – 23,200 x 800 – 28,000 x 1,000 – 29,000. In 1989 she joined the State Trading Corporation as a Typist Stenographer and in 2000, she was assigned the duties of Clerical Officer and in October 2001 she was appointed Clerical Officer with posting in the Registry/Administration Division. In year 2004, she was transferred to the Information Technology (IT) Division on account of her qualifications – she was in possession of an International Advanced Diploma in Computer Studies from the NCC, UK, acquired in February 2001; and a BSc (Hons) in Computing and Information Systems from London Guildhall University, UK, acquired in March 2003. As a Clerical Officer she was performing the duties of Systems Administrator in the IT Division. As a proof, note that, in letter dated 19 May 2005, she made a request for sponsorship to follow a training course in MCSE, a programme totally relevant to the duties of Systems Administrator and this request was approved on that grounds.

In 2006, the Disputant was officially assigned the duties of System Analyst, post restyled System Administrator and the holder of the post being assigned the duties of IT Manager. However, in 2008, when the acting IT Manager was appointed, she was transferred to the Administration Division/Procurement Unit and assigned the duties of Executive Officer. In June 2008 she was appointed Executive Officer. In October 2010, she sent a letter to the General Manager of the STC asking for incremental credits and subsequent reminders. She also referred the matter to the parent Ministry. In May 2009, while she was in the Administration Division, the post of IT Technician was advertised internally. She was the only fully qualified

internal candidate. In the absence of competitor, her promotion was supposed to be automatic, i.e. she should not have had to pass through a selection exercise. However, by passing the normal recruitment practice, STC called her to attend an interview. Just after her internal interview, officers of the HR Division, her juniors, were assigned higher duties, on administrative convenience, for long term and she being the senior most Executive Officer. However, in August 2009, the post of IT Technician was advertised externally. When she enquired about the outcome of her interview, she was informed that her direct Supervisor of the Administration Division had objected to her release for another division, or else the work would suffer. She was advised by the former GM of the STC to put in an application, which she did. She attended the interview for the open advert and was the only one to assume duty as IT Technician. Consequently she was paid salary on promotion as per paragraph 18.8.9 of the 2008 PRB Report, i.e., 1 increment, which would have been 3 increments had she been appointed under the internal circular or rather she would have received the initial salary of Higher Executive Officer had she been given to assign higher duties of Higher Executive Officer or appointed in such capacity. The post of Higher Executive Officer is being a grade to grade promotion to that of Executive Officer. She considered that she has been unduly penalized and referred the matter to the former GM. He agreed that exigencies of service were not a condition attached to the internal circular and as such cannot constitute a factor in determining her eligibility for the post of IT Technician. He promised to do the needful to pay her back the 2 increments on her confirmation. By the time she got her letter of confirmation (with delay and after numerous verbal requests), Mr Soomarooah had already departed from the STC. In November 2010, she sent a letter to the General Manager of the STC and a subsequent reminder on June 2011, requesting for the additional increments. She also referred the matter to the parent Ministry.

As per STC policy, incremental credits are paid for higher qualifications. When she was performing as a Clerical Officer in the IT Division, the work she was assigned was relevant to the qualifications she possesses, she had not benefitted from incremental credits. In fact she was assisting the Systems Administrator and performing duties at Systems Administration level. Now still as an IT Technician, she possesses qualifications which are above those prescribed, i.e., in addition to a Diploma, she possesses a degree and she was performing duties that do not form part of the normal duties of an IT Technician but of that of Systems Administrator. She would like to point out that officers in the grade of Clerical Officer and other grades have benefitted from incremental credits for additional qualifications. She has never benefitted from incremental credits. As per the recommendation paragraph 18.9.19 of the 2008 PRB Report, incremental credits are paid for qualifications which are fully or part of which are directly relevant to the performance of the duties of the grade and which are higher than the qualifications specified in the scheme of service for the grade. She denied the training in Procurement on the grounds that she would be rejoining the IT Division though she was the backbone of the Procurement Unit. She was denied long term actingship as Higher Executive Officer, which were being assigned to her juniors in the presence of 2 firm vacancies in the grade of Higher Executive Officer the holders of which being promoted Office Superintendent and Administrative Assistant respectively again on the grounds that she would be re-joining the IT Division. Thus depriving her of earning allowance either equivalent to 3 increments or the initial salary of Higher Executive Officer and by now her juniors have been appointed Higher Executive Officer. If she had been appointed Higher Executive Officer and remained in the Administration Division her salary would have been higher than what it is at present.

The Respondent replied in its Statement of Case that the Disputant is its employee and holds a substantive appointment as IT Technician. On the 1st September 1989, the Disputant joined service at the Respondent as Typist/Word Processing Operator. The Disputant was appointed Clerical Officer with effect from 2nd October 2001 and then on the 26th June 2008, she was appointed as Executive Officer. The Disputant held the following qualifications:

- a) Cambridge School Certificate (1978)
- b) GCE “A” level (2 subjects) (1992)
- c) Certificate in Word Processing, ACP (1990)
- d) Alliance Française-Cours Informatique, Niveau I & II (1990)
- e) Certificate in Computer Programming & applications, SITRAC (1994)
- f) BSc (Hons) Computing and Information Systems (March 2003).

The above qualifications held by the Disputant were prior to the publication of the PRB Report 2003, when she was holding a substantive appointment as Clerical Officer. Her appointment was subject to the recommendations of the PRB Report 1998. As spelt out at paragraph 12.8.10 (a) Recommendation 4 of the PRB Report 1998, incremental credits should be awarded only when a qualification is directly relevant to the duties of the grade and which is higher than the qualifications specified in the scheme of service for the grade. A degree in Computing was not considered as directly related to her duties of Clerical Officer. Following Disputant’s appointment as IT Technical which requires a Diploma in IT and related fields as highest qualification, she claimed for additional increments for holding a BSc (Hons) Computing and Information Systems. The post of IT Technician was advertised on 13th May 2009 through Internal Vacancy. The Disputant had applied for the post. The Board at its meeting held on 21st August 2009 was informed that the post of IT Technician

should be re-advertised. The Permanent Secretary informed the Board that he had received a representation from the Disputant that she should have been offered appointment as IT Technician as she was the most qualified internal candidate. The General Manager explained that the Disputant was in fact fully qualified for the post but she was not recommended by the Staff Committee. The General Manager informed the Board that the vacancy was being re-advertised in the press and that the Disputant could apply again. The post of IT Technician was advertised in the press on 13th August 2009 through open competition.

At a meeting held on 23rd October 2009, the Board approved the recommendation of the Staff Committee to appoint the following candidates on a six months' probation in order of merit. The Disputant was offered letter of appointment as IT Technician on 20th November 2009 on a probationary period of six months. She was given only one increment in line with recommendation 1, paragraph 18.8.9 (i) of the PRB Report 2008 as filling of vacant post was done by selection from both serving officers and external candidates in the same exercise. The Disputant sought clarification on that issue from Management through a correspondence dated 27th July 2010. Management, after seeking advice from the Ministry of Civil Service & Administrative Reforms informed the Disputant accordingly on the 15th September 2010 that her claim for 2 increments could not be entertained as advised by the Ministry of Civil Service and Administrative Reforms (MCSAR). Following her appointment as IT Technician which requires a Diploma in IT and related fields as highest qualification, the Disputant claimed for additional increments for holding a BSc (Hons) Computing and Information Systems. The advice of the Ministry of Civil Service Affairs & Administrative Reforms was again sought and the Disputant was informed that since the Degree in Computing and Information

Systems is not in addition to the Diploma in IT, she is not eligible for incremental credit for additional qualifications. The Disputant lacked the necessary IT skills in performance of her duties. In the circumstances, the Respondent sponsors her training course in MCSE to perfect her in the said skills despite the training course in MCSE and her qualifications, the Disputant was not performing and delivering her work properly and had to be transferred from IT Division to Administration Division. She has to be assessed by the interview panel whether she can perform the duties to the satisfaction of Management. The Disputant was fully aware that had she remained in the Administration Division, her salary would have been higher upon promotion as Higher Executive Officer. The Disputant accepted the post of IT Technician because in the long run her salary as an IT Technician would have been higher than a Higher Executive Officer.

The case of the Ministry of Civil Service and Administrative Reforms is as follows:-

By way of letter dated 03rd August 2010, the Ministry of Industry, Commerce and Consumer Protection (Commerce Division) had sought the advice of the Ministry for the grant of increment on promotion in respect of an employee of the State Trading Corporation. The Ministry of Civil Service and Administrative Reforms avers that according to information submitted by the State Trading Corporation in its letter dated 30th July 2010, the Corporation had on 02nd February 2010 advertised for the post of IT Technician through open competition and two candidates (one internal and one from outside) were offered appointment as IT Technician on 01st July 2010. In line with paragraph 18.8.9 (i) of the PRB Report 2008 and as the selection was done from both serving officers and external candidates in the same exercise, the serving

officer was granted by State Trading Corporation only one increment as she was drawing more than the initial salary prescribed for the post. The State Trading Corporation also stated that the serving officer accepted her appointment as IT Technician on the terms and conditions mentioned in the appointment letter. However, in a letter dated 27th July 2010, the latter made representation to the effect that she should have been granted 3 increments in line with paragraph 18.8.8 of the PRB Report 2008.

The Ministry of Industry, Commerce and Consumer Protection stated in a letter dated 03rd August 2010 that the grant of increment on promotion to the officer concerned should be in accordance with paragraph 18.8.9 (i) as the post was advertised to serving as well as to external candidates as per the scheme of service. On the 27th August 2010, the Ministry of Civil Service and Administrative Reforms informed the Ministry of Industry, Commerce and Consumer Protection that its above proposal was in order. The Ministry of Civil Service and Administrative Reforms maintains its stand conveyed in the letter dated 27th August 2010 to the Ministry of Industry, Commerce and Consumer Protection.

The Ministry of Civil Service and Administrative Reforms further avers that by letter dated 19th August 2010, the Ministry of Industry, Commerce and Consumer Protection (Commerce Division) sought the advice of the Ministry of Civil Service and Administrative Reforms in respect of the grant of incremental credit for additional qualification held by an employee of the State Trading Corporation who was promoted IT Technician through an open selection. According to information submitted by the State Trading Corporation in its letter dated 18th August 2010, the highest qualification required for the post of IT Technician, State Trading Corporation, was a Diploma in Information

Technology and the employee held a Degree in Computing and Information Technology since March 2003 when she was holding a substantive appointment as Clerical Officer. On the basis of the above information, the Ministry of Civil Service and Administrative Reforms advised the Ministry of Industry, Commerce and Consumer Protection (Commerce Division) in a letter dated 09th September 2010, Reference E/153/1/36, that since the Degree in Computing and Information Technology is not in addition to the Diploma in Information Technology, the IT Technician is not eligible for incremental credit for additional qualification. The stand of this Ministry conveyed to the Ministry of Industry, Commerce and Consumer Protection (Commerce Division) in a letter dated 09th September 2010 is maintained.

It is the case of the Ministry of Industry, Commerce and Consumer Protection that on 18th August 2010, the Respondent referred the first dispute on incremental credits to the said Ministry. On the 19th of August 2010, the Ministry of Industry, Commerce and Consumer Protection sought the advice of the Ministry of Civil Service and Administrative Reforms regarding the grant of incremental credit for additional qualifications held by the Disputant. On the 09th September 2010, the Ministry of Civil Service and Administrative Reforms advised that the Disputant is not eligible for incremental credits as since the degree in Computing and Information Technology is not in addition to the Diploma in Information Technology. On the 15th September 2010, the Ministry of Industry, Commerce and Consumer Protection informed the Respondent of the ruling of the Ministry of Civil Service and Administrative Reforms and the Disputant referred the matter to the Ministry of Industry, Commerce and Consumer Protection on 05th October 2011. On the 30th July 2010, the Respondent referred the second dispute in relation to salary on promotion to the Ministry of Industry, Commerce and Consumer Protection and requested that

the advice of the Ministry of Civil Service and Administrative Reforms be sought. On the 03rd August 2010, the Ministry of Industry, Commerce and Consumer Protection sought the advice of the Ministry of Civil Service and Administrative Reforms in the matter based on information submitted by the Respondent, i.e. the provision in paragraph 18.8.9 (i) of the PRB Report 2008. On the 27th August 2010, the Ministry of Civil Service and Administrative Reforms advised that the course of action as stated in the letter of the Ministry of Industry, Commerce and Consumer Protection, dated 03rd August was in order. On 03rd September 2010, the Ministry of Industry, Commerce and Consumer Protection conveyed the decision of the Ministry of Civil Service and Administrative Reforms to the Respondent. The matter was reconsidered and on 05th March 2012 the Respondent was requested to inform the Disputant inter alia of the outcome of her two requests as detailed. The Respondent being under the aegis of the Ministry of Industry, Commerce and Consumer Protection, incremental credits for higher qualifications are regulated in line with the PRB.

The stand of the PRB in relation to the first point in dispute is that it provides for the criteria for the ground of payment of incremental credit for additional qualification as stated in its report of 2003 at paragraph 15.8.14. The implementation of the recommendation according to the PRB rests with the Ministry of Civil Service and Administrative Reforms whereby the latter has to set up a Standing Committee under its Chairmanship comprising of representatives of the Ministry of Finance, Mauritius Qualifications Authority and the PRB to determine if any the award of the incremental credit for additional qualifications and make a pronouncement on any problem relating thereto. As regards the second point in dispute the PRB understands that the Disputant is claiming the grant of 3 increments with effect from 03rd December 2009 when she was promoted to the grade of Executive Officer. The relevant

applicable recommendation is at paragraph 18.8.9 (i) of the PRB Report 2008 dealing with salary and promotion. The PRB concurs with the stand of the Ministry of Civil Service and Administrative Reforms that the grant of increment is limited to one.

We reproduce here the provisions referred to in the PRB Reports 2003 and 2008 respectively.

“15.8.14 We recommend that:

- (a) Qualifications which are fully, or part of which are directly, relevant to the performance of the duties of the grade and which are higher than the qualifications specified in the scheme of service for the grade; and*

- (b) have been obtained as a result of studies, whether carried on one's own or as a result of a fellowship, of at least one academic year duration, full time or its equivalent in terms of contact hours/part-time studies would qualify for incremental credit subject to the following conditions:*
 - (i) the additional qualifications are obtained following an examination and duly recognized by the Mauritius Qualification Authority or National Accreditation and Equivalence Council;*

 - (ii) where different qualifications are laid down in a particular scheme of service, the highest one would be taken as the basic qualification for the purpose of determining eligibility for incremental credit;*

 - (iii) only officers holding a substantive appointment who are on incremental scale would be considered for the grant of incremental credit for additional qualifications;*

- (iv) *no incremental credit for additional qualifications would be granted to officers who have already benefited from incremental credits for the same qualification in another capacity;*
- (v) *the number of incremental credits for additional qualifications would in no case exceed three. Increments would be granted as follows:*

For additional qualifications requiring:

- (a) *up to two years' study full time - One increment
or equivalent part-time*
- (b) *above two years' up to three - Two increments
Years study full time or [inclusive of the
Equivalent part-time increment at (a)]*
- (c) *above three years' study - Three increments
full time or equivalent [inclusive of the
part-time two increments
at (b)].”*

“18.8.9 (i) Where recruitment to a grade, by virtue of the scheme of service or arrangement in force, is or may be done by selection both from serving officers and outside candidates in the same exercise, the serving officer should draw the initial salary of the grade or receive one increment if he was drawing more than the initial.

- (ii) *Where a serving officer applies for a grade in the service requiring qualifications of a completely different line than those of his grade, such as a Clerical Officer/Higher Clerical Officer applying for the grade of*

Engineer, the officer should, on appointment, join the grade at the initial of the scale or retain the salary of his previous grade, whichever is the higher.

- (iii) *Where a senior officer has been promoted directly and an officer junior to him has subsequently been promoted indirectly to the same grade i.e. after having obtained another promotion, the junior officer should in principle be granted up to a maximum of three increments provided his salary does not exceed the salary of the officer who is senior to him and has been promoted directly to the grade before him.”*

In a succinct and cogent address to the Tribunal, Mr Ravin Chetty, Senior Counsel for the Respondent submitted that a pragmatic approach ought to be given to this matter. It is for the Ministry of Civil Service and Administrative Reforms to examine the documents and to conclude thereon. According to him the Tribunal should not make any order as such. It can invite and not tread on the privilege of experts with regard to the evaluation of degrees. There seemed to be consensus on that point on behalf of Counsel for the Ministry of Civil Service and Administrative Reforms as well as Counsel appearing for the Ministry of Industry, Commerce and Consumer Protection.

Mr D Rutnah, Counsel for the Disputant submitted that the Tribunal is the proper forum to pronounce at least on the first issue of incremental credit with regard to additional qualifications. The Disputant has been denied her entitlements and she is not expected to go through that procedure again.

After considering the testimonial and documentary evidence and the various submissions of Counsel, the Tribunal finds established:-

- (a) that Disputant submitted documents to her employer with a view to obtain incremental credits with effect from year 2004 when she joined the IT Division as a Clerical Officer as a result of additional qualifications and upon her promotion from the grade of Executive Officer to that of IT Technician with effect from 03rd December 2009;
- (b) Respondent sought clarification with regard to Disputant's first request (a claim for 2 more increments) from the Ministry of Civil Service and Administrative Reforms;
- (c) same was turned down by the Ministry of Civil Service and Administrative Reforms;
- (d) following Disputant's appointment as IT Technician which requires a Diploma in IT and related fields as highest qualifications, she claimed additional increments for holding a BSc (Hons) in Computing and Information Systems. The advice of the Ministry of Civil Service and Administrative Reforms was again sought and the Respondent was informed that since the degree in Computing and Information Systems is not in addition to the Diploma in IT, Disputant is not eligible for incremental credit for additional qualifications;
- (e) relevant information and documents were not submitted to the Ministry of Civil Service and Administrative Reforms that would have led to a different decision;
- (f) the request for extra increment was in relation to, firstly, additional qualifications and secondly promotion;

(g) for the increment for additional qualifications Disputant would be qualified for the incremental credit for the degree if relevant information is submitted to the Ministry of Civil Service and Administrative Reforms; and

(h) in accordance with paragraph 18.8.9 (i) of the PRB 2008 referred above and given that the advertisement and recruitment for the post were both from internal and external candidates and in view of the fact that Disputant's salary drawn at that time of recruitment was overlapping and was more than the initial salary prescribed for the post of IT Technician, Disputant would be entitled to one increment.

The Tribunal wishes to draw the attention of parties that it is not within its province to authenticate documents relating to academic qualifications. This is precisely an exercise to be carried out by the relevant and proper authorities. Indeed it boils down to common sense and even the Pay Research Bureau cannot adjudicate on such issues. This is precisely why it made a recommendation for the setting up of a Standing Committee under the Chairmanship of the Ministry of Civil Service and Administrative Reforms comprising of representatives of the Ministry of Finance, the Mauritius Qualifications Authority and a representative of the Pay Research Bureau to determine on the award of incremental credits with regard to additional qualifications. We note that it concurred with the Ministry of Civil Service and Administrative Reforms that with regard to the second dispute the grant of increments is limited to one.

The Tribunal considers that the best course to adopt in this particular case is to invite the Disputant to resubmit all relevant information and documents

to the Ministry of Civil Service and Administrative Reforms via her employer for reconsideration.

The Ministry of Civil Service and Administrative Reforms would earn credit in acting diligently.

The Tribunal awards accordingly.

**(Sd)Rashid Hossen
(President)**

**(Sd)Georges Karl Louis
(Member)**

**(Sd)Desire Yves Albert Luckey
(Member)**

**(Sd)Raffick Hossenbaccus
(Member)**

Date: 05 September 2014