

EMPLOYMENT RELATIONS TRIBUNAL

AWARD

RN 88/14

Before

Indiren Sivaramen Vice-President

Vijay Kumar Mohit Member

Rajesvari Narasingam Ramdoo Member

Georges Karl Louis Member

In the matter of:-

Mr Vishal Gobin (Disputant)

And

Cargo Handling Corporation Ltd (Respondent)

The present matter has been referred to the Tribunal by the Commission for Conciliation and Mediation under Section 69(7) of the Employment Relations Act (hereinafter referred to as "the Act"). The Disputant and the Respondent as represented have not been able to reach an agreement and the Tribunal thus proceeded to hear the matter. Both parties were assisted by counsel. The terms of reference read as follows:

"Whether I, the Applicant, Mr. Vishal Gobin, Assistant I.T. Manager, ought to have been granted 3 or more increments instead of 1, to be at par with other incumbents who were thus upgraded and appointed in grade 5 following application of SRC 2008 Appeal Report and were granted 3 increments upon request; consequently moved further on their salary scale in grade 5 when compared to Applicant's; thereby disturbing the salary relativity and downgrading Applicant salary wise in relation to the others despite applicant was first to be appointed in the grade."

The Disputant deposed before the Tribunal and he solemnly affirmed to the truthfulness of the contents of his Statement of Case. He stated that since 2006 he was already in Grade 5 and that in January 2008 he was

given a salary of Rs 27,830- which was the initial salary point of the scale for Grade 5 in 2008. He only benefitted from a yearly increment granted in July to earn Rs 28,610. Disputant averred that by putting him on the initial salary point, he would have lost his two years' of service in the same grade. He referred to Annex D to his Statement of Case which is a copy of an extract of the report of the Job Evaluation Appeals Committee (JEAC) for the 2008 Salary Restructuration Exercise.

Disputant states he is claiming that his two years' of service in Grade 5 be considered when pitching him in the new salary scale for Grade 5. He referred to the case of the Administrative Manager where the latter's years of service would have been reflected in the latter's basic salary. At this stage, very importantly, Disputant clarified that before the Salary Restructuring Committee (SRC) of 2008, he was in the salary scale CS3. Prior to SRC 2008, salary scales were designated using a different terminology. Disputant averred that Grade CS3 was changed to and equivalent to Grade 5 with SRC 2008. Disputant referred to a number of posts and averred that these were all at a grade below him. Following the report of the JEAC, the holders of these posts were put on Grade 5 (from the lower Grade 6). These employees were then granted three increments and they started earning more than what Disputant was earning. Disputant added that the principle of granting three increments on promotion have been applied in those cases even though there was only upgrading. He should have benefitted from three increments also to reflect his seniority in the grade. He stated that when he complained, he was granted only one increment. He produced a document he made to show what he alleged was an anomaly (Doc A).

In cross-examination, Disputant stated that in 2007, he was earning Rs19,450. He agreed that following SRC 2008, his corresponding salary scale was increased. He did not agree however to be put at the initial salary point for Grade 5, that is, a salary of Rs 27,830. He stated that he was already working as Assistant IT Manager as from 2006 and could not earn the same salary as a newcomer who would join as Assistant IT Manager. He then conceded that until now there is only one post of Assistant IT Manager at the Respondent. His next post along the promotional route will be that of IT Manager. Disputant agreed that until recently the practice at Respondent was to grant three increments both for promotions and upgrading of posts. Disputant referred to previous instances where following the 'job appeal', salaries of employees in different departments would have been compared and increases granted. Disputant accepted that there is a policy decision as from 2013

that the Respondent will no longer grant three increments for posts which are upgraded.

In re-examination, Disputant stated that his case arose before 2013. He stated that salary has been defined in terms of grade and that as per the SRC all posts in one grade have the same worth salary-wise.

Mr Dahari, the HR Manager of Respondent, then deposed and he solemnly affirmed to the truthfulness of the contents of Respondent's Statement of Case. He stated that Disputant has benefitted every year from his increments. There is also a periodical salary increase which is applied to all posts at Respondent. He accepted that the post of Disputant was a little higher than those of other Assistant Managers in terms of salary scale. However, he averred that as far as Managers (and not Assistant Managers) were concerned, all Managers were on the same salary scale. For Assistant Managers, similar qualifications were required and the JEAC has put all the Assistant Managers at the same scale. Mr Dahari also referred to the previous practice which consisted of granting three increments following the upgrading of a post.

Mr Dahari then deposed on the promotional route within particular departments and stated that it is only if one applies for the post of Assistant IT Manager that one cannot earn more than Disputant since the latter is the senior most in that post. He stated that one increment was granted to Disputant on purely humanitarian ground. Although Disputant is not in the same department as the Assistant Accountant or the Assistant Administrative Manager, the increment was granted to keep him at par with them. Mr Dahari averred that the post of Mr Gobin is a stand-alone post and Disputant does not have to compete for the same post with others. He added that once the posts for heads of departments were put on the same salary scale, salary was used as criteria for seniority purposes.

In cross-examination, Mr Dahari accepted that if someone was appointed by Respondent in 2008 in Grade 5, the latter would join at the initial salary point of Rs 27,830. He did not agree however that Mr Gobin had to be pitched two points further on the Grade 5 salary scale. Mr Dahari accepted that he joined Grade 5 in or around year 2011 and had a bachelor degree and a MBA just like Disputant. He agreed that initially he was in a lower salary scale than Disputant. In Grade 5, there are only five employees concerned occupying posts in different departments. Mr Dahari stated that Disputant was given one increment for him to earn at least the same salary as the one earning the least in

the grade (actually to earn the same salary as the last two earners in that salary scale).

The Tribunal has examined all the evidence on record including the submissions of both counsel. Even though the term 'Grade' is used for the salary scales, one should be careful when referring to seniority in a grade. Seniority in a grade will be seniority in the post, for example, in the post of Assistant IT Manager. It is unfortunate that the Tribunal was not favoured with a complete copy of the SRC 2008 Report and relevant JEAC Report. From Annex D however, we note that the TASK (Tuned Assessment of Skills & Knowledge) Job Evaluation System was used for both the SRC Report and the JEAC Report. Basically, job evaluation entails determining the skill level of a post, the job content and its value to an organisation. It is the relative worth of the job which is determined and not the skills or abilities of the actual holder which are assessed. With the TASK Job Evaluation System, points are worked out for every job based on well defined factors and the location of a job in the hierarchy of work is determined by the total points attributed to that job. Pay grades are then designed and different jobs that are substantially equal for pay purposes are grouped into a pay grade. What is important is that jobs within one particular pay grade will be considered to have similar value or worth.

The Assistant IT Manager was placed in the Grade 5 salary scale following SRC 2008 whilst the Assistant HR Manager, Assistant Administrative Manager and Accountant were initially pitched at the lower Grade 6 salary scale. It appears that the Audit Supervisor was at an even lower salary scale, that is, at Grade 8 (as per Annex A to Disputant's Statement of Case). There is also unchallenged evidence that apart from the Assistant HR Manager (who was promoted as such in 2008), the holders of the other posts mentioned above (the Accountant was promoted from Assistant Accountant in 2009) were deriving lower salaries than Disputant as Assistant IT Manager. With the upgrading of the above posts to the Grade 5 salary scale following the JEAC and the granting of three increments to the holders, Disputant ended up earning less than any of the holders of the above posts. Following the granting of one increment to Disputant, the latter earned the same salary as the holders of the posts of Accountant (Assistant Accountant before promotion) and Assistant Administrative Manager. Nowhere, has the Disputant averred that these posts ought not to have been upgraded to Grade 5 salary scale. The practice at that time was to grant three increments following an upgrading just like for a promotion and this again is not being contested by Disputant. In fact, Disputant

benefitted indirectly from this grant of increments as he was in turn given one increment (which he would not have obtained otherwise) merely to put him at par salary-wise with the Accountant and Assistant Administrative Manager.

The evidence in relation to the Assistant HR Manager reveals the shortcomings in the case of the Disputant. Even though the actual holder was initially a Personnel Officer in a much lower salary scale than Disputant (CS 5 according to Doc A), the latter, even at that time, was earning more than Disputant who was at a higher salary scale CS 3. This can be explained by a number of factors including the length of service of the then Personnel Officer with Respondent. One should be very cautious when comparing the salary of one job holder against another. The Disputant rightly did not challenge the higher salary of the Assistant HR Manager even though the post of Assistant HR Manager had initially (following SRC 2008) been fixed in a lower salary scale (Grade 6) than that of the Assistant IT Manager.

The Accountant (now restyled Assistant Finance Manager) and Assistant Administrative Manager are now earning the same salary as Disputant (as per Doc A) and we find nothing wrong with same. The Tribunal keeps in mind that they are not in the same grade (post) as Disputant or in the same department as the latter. It is only the Audit Supervisor who, as per Doc A, was initially earning less than the Disputant who is still earning more than Disputant. When we refer to Annex A to Disputant's Statement of Case, we note that the said "post" was pitched at a much lower Grade 8 following the SRC 2008. This is in blatant contradiction with what Disputant wrote in his Doc A. Also, the Tribunal has no further evidence in relation to the length of service of that job holder or any promotion/s the latter would have obtained. Mention is only made in Doc A of the restyling of the post to Assistant Audit Manager but yet again the Tribunal is left in the dark as to this restyling. This is the difficulty when one tries to compare incumbents of certain posts as opposed to comparing the job contents.

It is important at this stage to consider the percentage increase obtained by Disputant following SRC 2008. As per the own workings of Disputant (Doc A), Disputant received an increase in salary of some 43% (and this even if we ignore the 2008 increment he received). The increase in salary for the Audit Supervisor following SRC 2008 is much less (if we rely on Doc A). It is apposite to note that as per Annex D to Disputant's Statement of Case, the average overall increase in salary for the whole organisation following SRC 2008 was 26%. In the absence of further

details on any promotion/s obtained by the Audit Supervisor and/or upgrading and/or restyling of the post and conditions of any such promotion/s, upgrading or restyling the Tribunal is unable to assess the progression in the salary of the holder of that post.

In any event, Disputant is not in the same post (grade) as the Assistant Audit Manager and there is no reason why Disputant should benefit from any promotion and/or upgrading which the holder of that post may have benefitted. If there was evidence that even as Assistant IT Manager, Disputant is eligible to be considered and/or to apply for appointment as Deputy Managing Director along with the other Assistant Managers, further considerations would have applied including the previous policy adopted by the Respondent in relation to increments granted to some Managers (as opposed to Assistant Managers).

In the light of all the evidence on record and reasons given above, the Tribunal finds that the Disputant has failed to show that he should have been granted three increments. The dispute is thus set aside.

Indiren Sivaramen (Sd)
Vice-President

Vijay Kumar Mohit (Sd)
Member

Rajesvari Narasingam Ramdoo (Sd)
Member

Georges Karl Louis (Sd)
Member

22 January 2015