

EMPLOYMENT RELATIONS TRIBUNAL

AWARD

ERT/RN 160/15

Before:	Indiren Sivaramen	-	Vice-President
	Vijay Kumar Mohit	-	Member
	Jay Komarduth Hurry	-	Member
	Khalad Oochotoya	-	Member

In the matter of:-

Mr Vidianand Naugloo (Disputant)

And

State of Mauritius, represented by

- 1. Ministry of Civil Service and Administrative Reforms**
- 2. Ministry of Finance and Economic Development (Respondent)**

In presence of: Pay Research Bureau (PRB)

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 Pay Research Bureau has been joined as a party in the present matter in the interests of justice with the agreement of both parties. Both parties and the Pay Research Bureau were assisted by counsel. The terms of reference read as follows:

"Whether the additional increment paid to me in January 2013 in accordance with paragraph 17.27A of the 2009 Errors, Omissions and Clarification Report, and thereafter cancelled with the implementation of Errors, Omissions and Anomalies

Committee Report on the PRB Report 2013 be reinstated with effect from the same date paid to me.”

The Disputant deposed before the Tribunal and he confirmed all the averments contained in the Statement of Case filed on his behalf. He referred to paragraph 19.27A of the Errors, Omissions and Clarifications (EOC) Report 2009 of the 2008 PRB Report and stated that he met the two conditions mentioned therein. He stated that with the PRB Report 2013, one increment is granted on the previous salary scale and then conversion is made from point to point. He did not have the initial increment since he was on the top point and thus his salary was directly converted into the PRB Report 2013 salary scale. Mr Naugloo averred that his employer then gave him an “additional remuneration” for his diploma “over the top”. The Errors, Omissions and Anomalies Committee (EOAC) Report 2013 changes the conversion and conversion is now done directly from salary in December 2012 and then one increment is added on the converted salary.

Mr Naugloo averred that the increment granted to him after conversion was denied to him with the EOAC Report 2013 so that this would represent a loss of increment in his monthly salary to him. He averred that if he had retained his increment he would have reached the top salary in 2015 whereas now he will reach the top salary only in 2016. He would have to satisfy the same conditions once more and thus can obtain his increment only in 2017 (if the two conditions are met). He referred to a possible outcome following a situation whereby a colleague of his would obtain his diploma after him.

In cross-examination, Mr Naugloo accepted that he has agreed to be governed by the terms and conditions of the PRB Report 2013 and has signed an option form to that effect. He also agreed that the EOAC Report 2013 forms an integral part of the PRB Report 2013. He agreed that he was not entitled to normal increment with the PRB Report 2013 and was given the “beyond the top increment”. He averred he was paid the “beyond the top increment” in March or April but backdated as from January 2013. He accepted that under the EOAC Report 2013, one increment was paid to all officers (irrespective of qualifications). He agreed that under the PRB Report 2013, his salary was converted to Rs 33,000- including the “beyond the top” increment whereas under the EOAC Report 2013 his salary reached a figure of Rs 33,590 (after the grant of one increment after the conversion). He did not agree however that he was better off with the EOAC Report 2013 than with the initial PRB Report 2013. Mr Naugloo conceded that in August 2008 he obtained an incremental credit for his diploma.

Mr Naugloo stated that he did not agree with the stand of the PRB that because of the contents of paragraph 17.27 of the EOAC Report 2013 he had not been deprived of any

increment for possession his diploma. He insisted that he had an acquired right in 2012 and cannot be required to satisfy once more in 2016 the same conditions he had satisfied in 2012. He did not agree that he could not retain the previous salary scale whilst benefitting from the revised salary scale. In re-examination, he stated that his salary in December 2012 was converted with the PRB Report 2013 and then one increment was added. This was however backdated to January 2013.

Mrs Patel, Assistant Manager, Human Resources, then deposed and she stated that Disputant reached his top salary of Rs 26,400 on 1 January 2012 and drew that salary as at 31 December 2012. He was given one increment beyond top to bring his salary to Rs 27,200 which was then converted to Rs 33,000 under PRB Report 2013. With the EOAC Report 2013, his salary of Rs 26,400 was converted directly to Rs 32,690 and he was given one increment to bring his salary to Rs 33,590. Disputant was paid an incremental credit in August 2008 for his diploma and with the PRB Report 2013 he was to be granted and was granted an "increment" prior to the coming into operation of the EOAC Report 2013. With the EOAC Report 2013, the condition is still valid but since Disputant has not yet reached the top salary of his scale, he will be granted the "beyond the top increment" only on reaching the top of the salary scale.

In cross-examination, Mrs Patel confirmed that the salary of Disputant in January 2013 was already different from his salary in December 2012. In re-examination, Mrs Patel confirmed the contents of paragraph 4 of Respondent's Reply to the effect that in accordance with current practice, increment beyond top salary, the grant of which is subject to specified performance, is granted before conversion to the revised salary as per the PRB Report 2013.

Mrs Reega, Assistant Manager, Human Resources then deposed on the conversion modes applicable under the PRB Report 2013 and EOAC Report 2013 respectively. She averred that the conditions for granting beyond the top salary on the basis of qualification had been preserved with paragraph 17.27 of the EOAC Report 2013. She added that when the salary of Disputant was converted on the revised EOAC scale on 1 January 2013, the latter was not on the top of the revised salary scale. She stated that Disputant thus could not be granted the "beyond top increment". Disputant will be entitled to same when he reaches the top salary within the revised salary scale. She stated that Disputant is not worse off with the EOAC Report 2013 since he is drawing more with the EOAC Report 2013 than with the initial PRB Report 2013.

In cross-examination, Mrs Reega confirmed that Disputant had not been granted the normal annual increment under the initial PRB Report 2013. He had instead been granted the "beyond top increment" and then his salary was converted to the revised salary scale. Mrs Reega stated that the salary of Disputant was increased in January

2013 because the “previous PRB 2008 Report was converted to the PRB 2013 Report which is higher”. Mrs Reega did not agree that Disputant was deprived of his rights and added that Disputant was not due the beyond the top increment as he drew the annual increment.

Mr Nagamah, Deputy Director of the PRB, deposed at another sitting of the Tribunal and he confirmed the accuracy of the observations filed on behalf of the PRB. He stated that the conversion policy of the EOAC Report 2013 prevails and the conversion mode of the initial PRB Report becomes obsolete. He added that the Disputant has not been deprived of any increment because provision is also made in the EOAC Report 2013 for “beyond the top increment” for those staying on the top and satisfying the relevant criteria.

In cross-examination, Mr Nagamah was confronted with the fact that the Disputant will have to satisfy the conditions once more after having satisfied same before and he stated that it is a conversion policy and that since it was the EOAC Report 2013 which was prevalent at that time, one should go according to the provisions of that report. To a question from Counsel for Respondent, Mr Nagamah stated that Disputant has not been deprived of any increment since the recommendation for incremental movement beyond top was in the EOAC Report 2013 and maintained in the PRB Report 2016.

The Tribunal has examined all the evidence on record including the submissions of all counsel. The stand of Disputant, as we understand it, is that he is not challenging any specific provision in the PRB Report 2013 or even in the EOAC Report 2013. According to Disputant, there was an erroneous interpretation or implementation of the conditions of employment which the Disputant has opted for. It is apposite to refer to arguments offered by Counsel for Disputant before the Tribunal at its sitting of 28 January 2016. He argued as follows:

“... we are not concerned with the condition of the employment itself but with the interpretation which parties may give to the condition of employment leading to its implementation or not. (...)

In fact, what the Disputant is saying throughout his Statement of Case is that the Respondent’s interpretation of the specific provision whether Errors and Omissions Report or the PRB is erroneous and such erroneous interpretation or implementation by the Employer of the conditions of employment for which we agree that the Disputant has opted for, cannot deprive the Disputant of the freedom to declare a dispute. It cannot deprive him of the freedom of coming to this Tribunal and expose before you and your assessors, how erroneous such interpretation of the provision of the different Reports is on the particular condition for which he has opted. So, this is why the Disputant is

coming before you. He is not contesting the condition. He is not saying that the condition must be improved. He has signed the option form, he is bound by it. It's just a question that the interpretation of the respondent leads the Respondent not to implement and the interpretation of the Disputant is that this should be implemented."

Counsel for Disputant has time and again insisted that he was not challenging the recommendations of the PRB. For instance, at the sitting of the Tribunal on 29 July 2016, counsel for the PRB stated the following:

"May please the Tribunal, I think now my learned Friend is challenging the recommendation of the PRB report itself. I don't think it's the proper forum for challenging.

Counsel for Disputant then replied: *"I am not challenging; I am just interpreting. I am just putting questions for an interpretation of that. It is a question of interpretation."*

Even the terms of reference before us very importantly refer to *"... the additional increment paid to me and thereafter cancelled with the implementation [underlining is ours] of Errors, Omissions and Anomalies Committee Report on the PRB report 2013 be reinstated ..."* The Tribunal will thus enquire whether the interpretation given to the relevant provisions is indeed erroneous as suggested by the Disputant.

Paragraph 19.27A of the EOAC Report 2009 reads as follows:

We recommend that incumbents in the grades of Financial Operations Officer formerly Finance Officer and Senior Financial Operations Officer formerly Senior Finance Officer possessing a Diploma in the relevant field may be allowed to move incrementally in the master salary scale up to salary points of Rs 28000 and Rs 31250 respectively provided that they:

(a) have drawn their top salary for a year,

(b) have been consistently efficient and effective in their performance during the preceding two years and have not been adversely reported upon on grounds of either performance or conduct.

Mrs Patel stated that in accordance with current practice when an officer is eligible for an increment beyond top salary, the grant of which is subject to specified performance, the latter is granted the increment due before the conversion to the revised salary as per the PRB Report 2013. This "increment beyond top salary" is not the incremental credit granted, for example, for relevant additional qualification. Paragraph 19.27A (above) is clear and provides that an officer may be allowed to move incrementally in

the master salary scale up to salary point of Rs 28000 (relevant point for Disputant). As per the evidence, Disputant could not move to salary point of Rs 28000 but only up to salary point of Rs 27200 in the master salary scale. As per the evidence led on behalf of Respondent, the salary of Disputant was then converted as per the PRB Report 2013 to a salary of Rs 33000. The EOAC Report 2013 comes with a different conversion mode and provides in no uncertain terms how the conversion should be effected. Paragraph 1.15.1 of the EOAC Report 2013 provides as follows:

*“Conversion to the new revised salaries should **exceptionally** be effected after the direct conversion of the salary drawn on 31 December 2012 to the new revised salary as per the EOAC Master Conversion Table and, thereafter, one increment should be granted hypothetically to all officers on 1 January 2013 (Row 3) subject to the top salary of the revised salary scale **and payable as from 1 July 2013.**”*

Conversion should thus be exceptionally effected after direct conversion of the salary drawn on 31 December 2012. This necessarily implies that no adjustment is provided at this stage for the “increment beyond top salary” or even for normal increment. After direct conversion, one increment is granted hypothetically (effectively and no longer hypothetically as per Circular Note No. 35 of 2013 (Doc B)) to all officers on 1 January 2013 (as per Row 3 in the EOAC Report 2013 Master Conversion Table at Annex 1 of the report).

It is apposite to note that even ‘normal increment’ is not something which is automatic but instead has to be earned.

Paragraph 18.9.1 of the PRB Report 2013 provides as follows:

“...When the salary of an officer is on an incremental scale, the holder is not entitled to draw any increment as of right. An officer, on appointment, is granted the initial salary of the salary scale of the grade. The guaranteed salary for an incumbent in the grade is the initial salary and any movement in the scale has to be earned. Increment is a method for rewarding those who have demonstrated adequate yearly progress and whose work and conduct have been satisfactory.”

With the EOAC Report 2013, even those officers who were initially granted the normal increment had their salary drawn on 31 December 2012 then converted directly to the new revised salary as per the EOAC Master Conversion Table. Thereafter, all officers including those who were not initially eligible for the normal increment were granted one increment and this includes the Disputant. The Tribunal fails to see how the EOAC Report 2013 may be interpreted **to allow Disputant to move incrementally in the previous master salary scale up to the salary point of Rs 27200**. The Tribunal has duly considered issues such as “acquired rights” or “prejudice” and even then the

Tribunal finds that the Disputant has failed to show that some other interpretation should have been adopted in this particular case. The main fallacy in the argument of Disputant is to equate the provision under paragraph 19.27A of the EOC Report 2009 with another provision for incremental credit for relevant additional qualification.

It is undisputed that following the EOAC Report 2013, the Disputant is better off in terms of salary (Rs 33590) as opposed to what he would have earned under the initial PRB Report 2013 (Rs 33000). The EOAC Report 2013 provides a similar provision (paragraph 17.27 Volume 2, Part I) to that of paragraph 19.27A of the EOC Report 2009 (see above) which reads as follows:

“17.27 The Committee further recommends that incumbents in the grade of Financial Officer/Senior Financial Officer possessing a Diploma in Public Sector Financial Management or a Diploma in Accountancy from a recognised institution or an equivalent qualification be allowed to move incrementally in the Master Salary Scale up to salary point Rs 39275 provided they: (i) have drawn the top salary for a year; (ii) have been efficient and effective in their performance during the preceding year; and (iii) are not under report.”

The Disputant thus has not been deprived of the possibility to move incrementally further along the new Master Salary Scale beyond the top salary for his grade. Also, in this particular case, it is not appropriate to look at one provision in isolation from the other provisions provided for in the EOAC Report 2013 including paragraph 17.27 (above) and the increment granted to Disputant when he was not previously entitled to same before (under paragraph 1.15.1 of the EOAC Report 2013).

It is also not proper for Disputant to refer to ‘hypothetical’ cases involving so called colleagues who would obtain similar qualifications held by him after him. There are so many parameters to be considered in such situations (including prior incremental credits granted subject to top salary) and more importantly which have to be considered in each separate individual case.

For all the reasons given above, the Tribunal finds that the Disputant has failed to show that he should be allowed to move incrementally in the then master salary scale up to salary point of Rs 27200 as per paragraph 19.27A (and not 17.27A as wrongly referred to in the terms of reference) of the EOC 2009 Report. The Disputant has failed to show that any “additional increment” should be reinstated to him and the dispute is thus set aside.

Sd Indiren Sivaramen
Vice-President

Sd Vijay Kumar Mohit
Member

Sd Jay Komarduth Hurry
Member

Sd Khalad Oochotoya
Member

19 August 2016