

**EMPLOYMENT RELATIONS TRIBUNAL**

**AWARD**

**ERT/ RN 155/17**

**Before**

<b>Indiren Sivaramen</b>	<b>Vice-President</b>
<b>Raffick Hossenbaccus</b>	<b>Member</b>
<b>Abdool Feroze Acharauz</b>	<b>Member</b>
<b>Yves Christian Fanchette</b>	<b>Member</b>

**In the matter of:-**

**Mr Devendre Gopaul (Disputant)**

**And**

**The State of Mauritius as represented by The  
Ministry of Civil Service and Administrative Reforms  
(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”). Both parties were assisted by counsel and the Tribunal proceeded to hear the matter following a ruling delivered by the same panel in relation to preliminary objections in law which were taken on behalf of Respondent. The terms of reference of the point in dispute read as follows:

*“Whether I should be granted an Incremental Credit for additional qualifications (Master of Laws) as per provisions set out in PRB Report 2013 instead of a lump sum as Higher Qualification Incentive which has been provided for in the PRB Report 2016.”*

The Disputant deponed before the Tribunal and he confirmed the averments in his Statement of Case. He stated that the cut-off date applied was an abrupt and unilateral decision and was in contradiction to paragraph 18.9.18A of the Addendum Report to the 2016 Pay Research Bureau (PRB) Report which refers to a “smooth transition” from the grant of Incremental Credit for additional qualifications to the Higher Qualification Incentive (HQI).

In cross-examination, Disputant agreed that he signed the option form for the 2016 PRB Report on 18 April 2016. He stated that he signed the option form on the “assumption” that for qualifications obtained prior to 2016 the matter would still be governed by the 2013 PRB Report (and not the 2016 PRB Report). He agreed however that it was the “Standing Committee” which was entrusted to devise such regulations or principles as may be necessary to deal with the award of HQI as well as the smooth transition from the grant of Incremental Credit for additional qualifications to HQI. He stated that he was made aware of the decision of the Standing Committee as to the implementation of the HQI much later by way of Circular No 1 of 2017 dated 3 February 2017. Disputant then curiously stated that he was not challenging the decision of the Standing Committee but disagreed with the decision which the Ministry of Civil Service and Administrative Reforms (MCSAR) conveyed to him.

Mrs Millien, HR Manager at the MCSAR then deponed and she confirmed the contents of the Statement of Reply of the Respondent. She stated that Disputant made an application for the grant of Incremental Credit on 8 January 2016. She stated that all public officers should have been aware that the 2016 PRB Report would take effect as from 1 January 2016 since this was mentioned in the 2013 Errors, Omissions and Anomalies Committee (EOAC) Report (following the 2013 PRB Report). She then stated that the onus was on a public officer to make a timely application for the grant of any increment. Mrs Millien also referred to Circular Note No. 6 of 2016 which was issued to all Supervising Officers and which highlighted the salient features of the 2016 PRB Report including the HQI. She then stated that it was decided to freeze all applications received as from 1 January 2016 since the (new) PRB Report was to take effect as from 1 January 2016. This would thus, for instance, avoid public officers having to make reimbursements subsequently, where applicable.

In cross-examination, Mrs Millien agreed that at the time Disputant made his application for Incremental Credit, he was not aware that there would be a change as regards provisions in relation to incremental credit for additional qualifications. She stated that under the 2013 PRB Report they used to pay the additional increment as from the date of appointment, confirmation or award of the qualification whichever date was the latest. She then referred to the members of the Steering Committee and stated that the Committee which includes a representative of the PRB did not find it fit to include a

transition date. In re-examination, she stated that every officer who signs the option form is deemed to have taken cognizance of the Circular No. 6 of 2016 and the PRB Report.

The Tribunal has examined all the evidence on record including the submissions of both counsel. It is not disputed that Disputant signed the option form (as per copy produced and marked Doc B) so that he has for all intents and purposes accepted “the revised emoluments and terms and conditions of service as set out in the Report” (as per the option form following the 2016 PRB Report). Counsel for Disputant conceded that he would have no case in the absence of paragraph 18.9.18A of the Addendum Report to the main 2016 PRB Report. The said paragraph 18.9.18A reads as follows:

*“We additionally recommend that the Standing Committee should devise such regulations or principles as may be necessary to deal with the award of HQI as well as the smooth transition from the grant of Incremental Credit for Additional Qualifications to HQI.”*

Two things emerge clearly from this. First, the responsibility to devise regulations or principles as may be necessary to deal with the award of HQI as well as the smooth transition from the grant of Incremental Credit to HQI was given to the Standing Committee. Disputant is relying to a large extent on this paragraph which is binding upon both the Disputant and Respondent. It is nowhere challenged that the Standing Committee did come up with such regulations or principles which were publicized in the Circular No 1 of 2017 dated 3 February 2017. The decision conveyed to Disputant in his particular case was prior to that but along the same principle, that is, that the date of application is the cut-off date for determining eligibility for the award of Incremental Credit/HQI. As per Docs 1 and 4 annexed to the Statement of Case of Disputant, the Standing Committee though re-examining the request the Disputant (following a request for review) maintained its earlier decision.

Mrs Millien stated clearly that the onus was on a public officer to make a timely application for the grant of any increment. This has not been challenged, and rightly so, on behalf of the Disputant. The Tribunal finds nothing wrong with this statement of Mrs Millien. The averment of Disputant that he assumed when he signed his option form that his application would still be governed by the 2013 PRB Report since he obtained his qualification prior to 1 January 2016 has not impressed us at all. The whole mechanism for additional qualification was being changed with the 2016 PRB Report and Disputant who should, at least, have been aware of same nevertheless preferred to sign the option form by making an assumption that his application which was then still pending, would be governed by conditions which existed under the 2013 PRB Report. The Tribunal does not agree that any reasonable person would have thought like him. Even though in the case of Disputant the date of appointment or confirmation may not be particularly relevant, it is important to note that Mrs Millien stated that under the 2013 PRB Report they used

to pay the additional increment as from the date of appointment, confirmation or award of the qualification whichever date was the latest.

Indeed, we take note that paragraph 18.9.25 of the 2013 PRB Report provides as follows:

***Recommendation 12***

***18.9.25 We also recommend that incremental credits for additional qualifications should be payable either as from the date of appointment in the grade or as from the date of confirmation or as from the date the additional qualification has been awarded, whichever is the latest.***

Even under the 2013 PRB Report, the date of award of the qualification was thus not necessarily the determining factor for the payment of the increment.

The Standing Committee took the decision that the date of application is the cut-off date for determining eligibility for the award of Incremental Credit/HQI. There is nothing on record to suggest that it could not do so. As per paragraph 18.9.18A of the Addendum Report (see above), the Standing Committee was fully mandated to devise regulations or principles as may be necessary to deal with the award of HQI as well as (how best to ensure) the smooth transition from the grant of Incremental Credit for Additional Qualifications to HQI. The Tribunal also takes note that paragraph 18.9.18 of the 2016 PRB Report already provided as follows:

*18.9.18 We further recommend that the Standing Committee under the chairmanship of the MCSAR and comprising representatives of the Ministry of Finance and Economic Development, the Mauritius Qualifications Authority, the Tertiary Education Commission, the Pay Research Bureau and, where necessary, the Ministry/ Department/Organisation concerned should continue to look into the award of HQI and consider all related cases of disputes. However, straightforward cases should be dealt with at the level of the Ministry of Civil Service and Administrative Reforms.*

The Tribunal finds that the onus was indeed on the Disputant to make his application in a timely manner after obtaining his Master degree. There is no explanation whatsoever from him as to why he did not make his application at or about the time he obtained his qualification. This is the more so where the 2013 EOAC Report already provided at its paragraph 1.16.2(iii) (Recommendation EOAC 1) that the next review of pay and grading structures and conditions of service in the public sector (which will thus concern Disputant) should be effective as from 1 January 2016. Disputant could still opt whether to agree or not with the new terms and conditions of work and he decided to opt for the revised emoluments and terms and conditions of services knowing well about the major change brought to provisions in relation to additional qualification with the introduction of HQI.

Though the issue was not raised in the pleadings of the parties, Counsel for Disputant tried to suggest that Disputant had already acquired Incremental Credit for the months of January, February and March 2016. This is clearly not the case and the Tribunal is not satisfied at all that there was any acquired right of Disputant to any alleged Incremental Credit. Disputant had only a right under the then 2013 PRB Report to make an application after he acquired the additional qualification and very importantly, the qualification had to qualify for incremental credit. There was nothing automatic. Disputant however allowed this right to 'lapse' in the circumstances by making his application only after 1 January 2016 and then opting to accept the revised emoluments and terms and conditions of service in the 2016 PRB Report. The Standing Committee came to its decision in relation to HQI and this Tribunal is certainly not going to review that decision of the said Standing Committee.

The Disputant has himself to blame for making his application only in January 2016 and then knowingly sign the option form under the 2016 PRB Report when the said report introduced a major change to the mechanism in relation to additional qualification. The Tribunal thus finds that the Disputant could not have been granted Incremental Credit for additional qualification as per provisions set out in the 2013 PRB Report and the dispute is set aside.

**SD Indiren Sivaramen**

**Vice-President**

**SD Raffick Hossenbaccus**

**Member**

**SD Abdool Feroze Acharauz**

**Member**

**SD Yves Christian Fanchette**

**Member**

**20 June 2018**