

**EMPLOYMENT RELATIONS TRIBUNAL**

**AWARD**

**ERT/ RN 12/16**

**Before**

<b>Indiren Sivaramen</b>	<b>Vice-President</b>
<b>Abdool Kader Lotun</b>	<b>Member</b>
<b>Eddy Appasamy</b>	<b>Member</b>
<b>Parmeshwar Burosee</b>	<b>Member</b>

**In the matter of:-**

**Mr Moonsamy Goundan (Disputant)**

**And**

**Central Electricity Board (Respondent)**

**I.P.O: Mr Nunkoomar Ramlowat (Co-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 Co-Respondent has been joined in as a party in the present matter. The Co-Respondent was duly informed of the nature of the dispute and his stand was to the effect that he had nothing to say in the matter. The case eventually proceeded in the absence of Co-Respondent who was not needed by both the Disputant and the Respondent. The Disputant and the Respondent were assisted by counsel. The terms of reference of the point in dispute read as follows:

*“Whether the Central Electricity Board ought to align the salary of the applicant with that of Mr N.Ramlowat as from April 2011 being given that latter was drawing a lower salary than the applicant from a lower salary scale before he was promoted to the salary scale of the applicant.”*

The Disputant adduced evidence before the Tribunal and he stated that his Statement of Case and amended Statement of Case reflect the truth except that now he prefers that the two amendments made to his Statement of Case be withdrawn. He stated that there were two salary reports from Mr Appanna and that there is a third one under preparation. He stated that when he retired in 2013, he retired as Senior Audit Officer. Following a dispute which he reported in relation to his non-appointment as Senior Audit Executive, he reached an agreement in May 2017 with the Respondent whereby the Respondent confirmed his appointment as Senior Audit Executive effective as from October 2013.

At another sitting of the Tribunal, Counsel for Disputant informed the Tribunal that Disputant was not pressing with paragraph 17 and the prayer at paragraph 19 of his amended Statement of Case. Disputant produced copies of various documents (Docs A, B, C, D, D1, D2, D3, E to J). In cross-examination, the Disputant agreed that in Doc I, the Respondent was informing him as co-signatory of a letter dated 29 May 2013 that the Respondent has no prerogative to bring changes to the recommendation of the consultant. It was suggested that he could forward his representation as per General Staff Information Circular No. 1879/07/13. He however did not agree with that stand since, according to him, the letter sent to the Respondent was in relation to the Appanna Report on Pay Structures and Conditions of Employment 2009 (Appanna 1 Report) whereas the Circular No. 1879/07/13 refers to the Appanna Report on the Review of Salaries and Other Conditions of Service 2013 (Appanna 2 Report). He was shown a document and he stated that this document, at first sight, listed his duties and responsibilities as Senior Audit Officer (produced as Doc K) though he added that there are always changes in the schedule of duties. He agreed that the duties of a Senior Auditor would differ from that of a Principal Technical Officer. He suggested that there were more than one "PTO", that is, one in each of three departments.

At a further sitting of the Tribunal, Mr Ramasamy, the Acting HR Executive of the Respondent deponed on behalf of Respondent and he produced a document setting out the duties and responsibilities of a Principal Technical Officer (Revenue Protection) (Doc L). He confirmed that the stand of the Respondent is that it cannot interfere with the recommendation of the consultant. He stated that a collective agreement was made on 13 January 2010 based on the Report on Pay Structures and Conditions of Employment of 2009. There was a 'Report for Errors and Omissions' which later integrated the 2009 Report and thus became part of the report and binding on the Respondent. He stated that paragraph 5.95A of the Report on Errors, Omissions, Clarifications and Other Issues, 2010 (Doc F) relates to other grades of employees and cannot be extended to the Senior Auditor.

In cross-examination, Mr Ramasamy stated that he will have to verify if Doc L relates to year 2009. A copy of a document pertaining to the job description of the grade of

Senior Audit Officer was produced and marked Doc M. Mr Ramasamy agreed that the only reason why the Respondent is saying that the case should not be entertained is as per paragraph 3 in Respondent's Reply to Disputant's Statement of Case (identical to paragraph 3 in Respondent's Amended Reply to Disputant's amended Statement of Case).

The Tribunal has examined all the evidence adduced before it including documents produced and the submissions (including written submissions of Counsel for Disputant) of both counsel. Though reference has been made to Appanna 1 and 2 Reports, the Tribunal has only been provided with extracts of the said Appanna 1 and 2 Reports and of the Report on Errors, Omissions, Clarifications and other Issues, 2010 following the said Appanna 1 Report. Doc G (a barely legible copy) which relates to the "Terms of Reference – Job Evaluation & Salary Review" of the Appanna 1 Report includes the following:

*(a) Review the existing job designations, job descriptions and position requirements within the organizational structure and where appropriate update or propose new designations, and job specifications as needed in a modern electric utility and consistent with CEB's corporate designation.*

*(b) ...*

*(d) Based on (a) & (b) above, recommend reassignment of tasks and skills among jobs, where appropriate.*

#### *Review of Compensation*

*(i) Review/update the existing Human Resource policies, procedures and practices, internal regulations and terms and conditions of service.*

*(ii) ...*

*(iii) Taking into consideration the Human Resources Processes, recommend a salary and wages structure and other conditions of service for the recommended job designations, to be effective as from 01 July 2009.*

*...*

#### *Pay Relatives and Capacity to Pay*

*(i) The Consultant shall, whilst making recommendations, give regard to the pay relativities in line with market realities, whilst considering the specificities of the CEB and its economical (sic) and financial status.*

Reference has been made to section 5.95 of the said Appanna 1 Report (Doc B) and the section reads as follows:

*5.95 During consultations, certain representations submitted by the unions/individuals (e.g promotion to higher grades in the hierarchy) clearly do not fall to be considered within the scope of the terms of reference of this assignment. **However, to the extent that these representations are still valid and relevant and need resolution, Unions and Management may wish to pursue discussions on these issues in the appropriate forum.***

Promotion to a higher grade is different from upgrading of a post. The Tribunal finds that the consultant as per Doc G above was entitled to “recommend a salary and wages structure and other conditions of service for the recommended job designations” including, where appropriate, to update or propose new designations. The issue of Disputant having “legitimate expectation to pursue matter with the Board to resolve issues concerning upgrading of posts” (as per written submissions submitted) does not arise and, in any event, discussions are suggested on these specific issues between unions and management and not between individual workers and management.

Also, we fail to understand the rationale of Disputant’s case before the Tribunal. The latter seems to be saying that the consultant had no power to make the recommendation at paragraph 5.95A in the Report on Errors, Omissions, Clarifications and Other Issues (Doc F) but at the same time is praying that the Respondent should align the salary of the Disputant with that of Co-Respondent as from April 2011. Paragraph 5.95A (above) reads as follows:

*5.95A: We also recommend that the Principal Technical Officer and the Health & Safety Officer who are classified under salary scale CEB (S) 7 be exceptionally allowed on reaching the top of the salary scale, to proceed incrementally in the master salary scale up to salary point Rs 52000 subject to satisfactory performance, conduct and availability.*

Reference has been made in the written submissions to a “colorable device used unjustly to promote another person on the head and shoulders of the Applicant” and that the recommendation of Mr Appanna was meant only for Co-Respondent. The Tribunal finds that no evidence has been adduced to substantiate such arguments. In fact, evidence has been adduced by Disputant himself before us that there were allegedly PTOs (which we understand from his evidence to be Principal Technical Officers) in the Production Department, Transmission and Distribution Department and finally in the Customer Service Department. According to Disputant, Co-Respondent was a Principal Technical Officer in the Customer Service Department.

There is thus no substance in the suggestion that the recommendation at paragraph 5.95A was made as a colorable device to unjustly promote another person, that is, Co-Respondent on the head of Disputant. Recommendation 5.95A in the Report on Errors,

Omissions, Clarifications and Other Issues (Doc F) applied indistinctively to incumbents in the post of Principal Technical Officer and (underlining is ours) Health & Safety Officer who were classified under salary scale CEB (S) 7. Moreover, as rightly highlighted by Counsel for Respondent, there was also Recommendation at paragraph 5.95B which read as follows:

*5.95B: We also recommend that Surveyors possessing the Sworn Land Surveyors Commission be allowed to proceed incrementally in salary scale CEB (S) 8 on reaching the top salary of the grade, subject to satisfactory performance, conduct and availability.*

This recommendation thus applied to all incumbents in the said post as qualified.

It has also been submitted (again in written submissions) that the Errors, Omissions, Clarifications and Other Issues Report has been unilaterally implemented and that management has not entered into negotiation with CEBSA (which we understand to be the CEB Staff Association) before signing a collective agreement on the Errors, Omissions, Clarifications and Other Issues Report. It is also suggested that the mechanism to pursue discussions on issues mentioned at paragraph 5.95 of the Appanna 1 Report (Doc B) has not been set up. However, no iota of evidence has been adduced before us to substantiate such submissions. We have no evidence of any complaint from the relevant union and there is in fact unchallenged evidence on record that a collective agreement based on the Appanna 1 Report was in fact signed between the relevant parties. However, we do not have a copy of the said Collective Agreement so that the Tribunal cannot make any assumption that the Report on Errors, Omissions, Clarifications and Other Issues (2010) would be excluded from the Collective Agreement entered into on 13 January 2010.

Reference has also been made to the Memorandum of Understanding (MOU) signed between the Respondent and CEBSA dated 3 February 2014 (copy marked Doc C) and which would thus apply for the future. The Disputant however has chosen not to mention the MOU signed on 15 October 2009 and which is clearly referred to in the letter dated 13 November 2009 addressed to CEBSA (Doc J) and produced by Disputant himself. The relevant paragraphs in the letter read as follows:

*“In line with the Collective Bargaining Process mentioned in the Memorandum of Understanding signed on 15 October 2009, we shall arrange for a half-day workshop between each Union and Management in the presence of Mr Appanna.*

*We would consequently advise that you study the reports and forward the list of issues (if any) on which you would require explanations/clarifications, and any other related issues that you would wish to discuss by the end of November 2009.*

*We thank you for your collaboration and look forward to the signature of the Collective Agreements between the CEB and Unions in due course so that the recommendations contained in the Reports could be implemented timeously.”*

Whilst the Tribunal has no issue in relation to the conduct or performance of Disputant at work for the relevant period as per Doc E, the Tribunal cannot, on the basis of the evidence before it, jump to conclusions to find that there has been some form of injustice towards Disputant. The Tribunal has been left in the dark as to various factors such as the then external relativities considered (if any), any changes to job specifications “as needed in a modern electric utility”, reassignment of tasks if any (as per Doc G) and so on.

Also, paragraph 5.95A (as per Doc F) emanates from the Report on Errors, Omissions, Clarifications and Other Issues, 2010 which has been prepared following (underlining is ours) the Appanna 1 Report. The words used are clear and simple and the intention of the maker thereof is that the Principal Technical Officer and the Health & Safety Officer who are classified under salary scale CEB (S) 7 be exceptionally (underlining is ours) allowed on reaching the top of the salary scale, to proceed incrementally in the master salary scale up to salary point Rs52000 subject to certain conditions. The only reasonable conclusion is that the maker thereof knew that there were incumbents of other posts in the same salary scale CEB (S) 7 who would thus not benefit from the said exceptional recommendation.

For all the reasons given above, the Tribunal finds that the Disputant has failed to show on a balance of probabilities that the Respondent ought to align his salary with that of Co-Respondent as from April 2011. The dispute is thus set aside.

**SD Indiren Sivaramen**  
**Vice-President**

**SD Abdool Kader Lotun**  
**Member**

**SD Eddy Appasamy**  
**Member**

**SD Parmeshwar Burosee**  
**Member**

**6 December 2018**