

EMPLOYMENT RELATIONS TRIBUNAL

AWARD

ERT/ RN 43/19

Before

Indiren Sivaramen	Vice-President
Abdool Kader Lotun	Member
Abdool Feroze Acharauz	Member
Ghianeswar Gokhool	Member

In the matter of:-

Ms Delanee Ramsamy (Disputant)

And

**The State of Mauritius as represented by
Ministry of Finance and Economic Development
(Respondent)**

**i.p.o 1. Ministry of Civil Service and Administrative Reforms (Co-Respondent
No 1)**

2. Pay Research Bureau (Co-Respondent No 2)

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"). Co-Respondent No 2 was then joined as a party to the proceedings. The Respondent and Co-Respondents were assisted by counsel whilst the Disputant was assisted by the President of a federation of trade unions. The Tribunal proceeded to hear the matter. The terms of reference of the point in dispute read as follows:

"Whether my appointment to the grade of Internal Control Officer/ Senior Internal Control Officer (ICO/SICO) from the grade of Management Support Officer should be based on Recommendation 1 Paragraph 18.8.9 or 18.8.10(iii) of PRB report 2016."

The Disputant deponed before the Tribunal and she stated that she joined the service as Clerical Officer/ Higher Clerical Officer in 2002. She was confirmed in her grade in May 2003 and in November 2008, she opted for the post of Officer. The post of Officer was restyled in 2013 as Management Support Officer. Following a selection exercise, she was offered appointment as Internal Control Officer/ Senior Internal Control Officer (ICO/SICO) in a temporary capacity at the Ministry of Finance. She was posted at the Ministry of Social Security and in January 2018, she was offered appointment in a substantive capacity. She stated that she had the qualification mentioned under the first limb of the qualifications required, that is, the relevant Fundamentals of the ACCA Examination. She had the qualification for the post and thus applied for same and was selected among serving officers who hold a substantive appointment. She averred that it was a class to class promotion and that she should have been paid three increments on her substantive appointment in the grade of ICO/SICO. She averred that officers who qualify for class-to-class promotion have been granted three increments for many years.

Disputant stated that there were 25 Internal Control Officers who joined the Internal Control Cadre in July 2017 and most of them, posted in various ministries/departments, were granted three increments save for three of them including her. She averred that a particular recommendation of the Pay Research Bureau (PRB) Report 2016 is being applied in her case whilst another recommendation is being applied for other Internal Control Officers which she says is unfair. The Standing Committee of the Civil Service has ruled that recommendation 18.8.10(iii) of the PRB Report 2016 should apply in her case. She added that the other officers appointed in her batch are still in receipt of the three increments despite the ruling of the Standing Committee. She avers that for another batch of ICOs/SICOs appointed in September 2017, the officers are also being paid the three increments.

In cross-examination, Disputant was confronted with the position taken by Co-Respondent No 1 as communicated to her in a letter dated 16 August 2018 emanating from the Ministry of Social Security (Doc B). She agreed that the Standing Committee mentioned in the PRB Report 2016 is mandated to make appropriate recommendations on issues arising in the implementation of the provisions relating to salary on promotion. She stated that she does not agree with the recommendations of the Standing Committee because she is being treated unfairly compared to her other colleagues. She agreed however that Co-Respondent No 1 has to stand guided by the decision taken by the Standing Committee. However, she added that one cannot be guided by a wrong decision. Disputant maintained vehemently that the qualifications required for the post of ICO/SICO were not completely different from the qualifications required for the post of MSO. According to Disputant, the qualifications were just different.

Mr Beeharry, Acting Quality Assurance & Accreditation Officer at the Tertiary Education Commission, then deponed before the Tribunal. He stated that the

'qualifications' required under the first limb, that is, "*have successfully completed all papers of Fundamentals (Knowledge) and Paper F4 of Fundamentals (Skills) of the ACCA Examinations*" are not qualifications as such but are components of a qualification. He stated that one has to complete other papers as well to complete the ACCA qualification.

Mr Ramsamy, Accreditation Officer at the MQA then deponed before us and he also stated that the 'qualifications' under sub-paragraph (i) of paragraph II of Doc 2 annexed to the Statement of Case of Disputant are only components of the ACCA qualifications. He stated that it is clear that the 'qualifications' under the first limb (see above) do not amount to a qualification *per se*. In cross-examination, he stated that the MQA is not concerned with the recognition of secondary education qualifications. He however stated that the MQA is mandated to maintain a national qualification framework where there are ten levels according to the level of difficulty. Thus, they are called upon to evaluate all qualifications be it primary or secondary according to the said framework to provide a level of comparability.

Mrs Ruchun, HR Manager, then deponed on behalf of Respondent and she stated that the contents of Respondent's Statement of Reply are correct. The recommendation of the Standing Committee was that Recommendation 18.8.10(iii) of the PRB Report 2016 was applicable in the case of the Disputant. She stated that the Respondent then adjusted the salary of the Disputant without however requesting for any refund. In cross-examination, she agreed that officers appointed as ICOs/SICOs are officers of the Respondent and are then posted in different ministries. The first batch of ICO/SICO was recruited in 2001. The officers recruited in 2001 were governed by the 1998 PRB Report which recommended that on a class to class promotion, incumbents are given one increment on promotion. With the 2003 PRB Report, there was a recommendation that for class to class promotion, if appointment is made from among officers in different grades and they had received only one increment, then adjustments should be made to bring it to three increments. The Respondent wrote to Co-Respondent No 1 for approval for those Internal Control Officers to be guided by this 2003 Recommendation. The said officers were paid the three increments ultimately. There have been recruitments made several times thereafter and the ICOs/SICOs recruited have been paid three increments. Mrs Ruchun stated that indeed it seems unfair when it was put to her that among officers recruited in 2016, some had been paid the three increments whereas others had not been paid.

Mrs Gungaram, Senior Human Resource Executive, then deponed on behalf of Co-Respondent No 1. She stated that the contents of the Statement of Defence of Co-Respondent No 1 were correct. She was referred to Document 1 annexed to the Statement of Case of Disputant and she produced a copy of the scheme of service for ICO/SICO (Doc C). She stated that the post of MSO is filled by way of public advertisement, that is, it is advertised to the general public, whilst the post of Internal Control is filled by selection from among serving officers who hold the required

qualifications as stated in the scheme of service. She referred to paragraph 18.8.14 of the PRB Report 2016 (Volume 1) which relates to the Standing Committee on Remuneration. She stated that the Standing Committee which met on 25 June 2018 decided that Recommendation 18.8.10(iii) of PRB Report 2016 should be applied in the case of Disputant. She could not comment when it was suggested to her that out of 24 MSOs who were selected, only three were deprived of the three increments whilst others were paid the increments. She stated that it was for the Ministry of Finance and Economic Development to confirm same.

In cross-examination, Mrs Gungaram conceded that there is Recommendation 18.8.9 but she added that there are exceptions to that Recommendation and she referred to Recommendation 18.8.10(iii). She stated that the Ministries which have paid their officers stood guided by Recommendation 18.8.9. She then stated that the case has been referred to the HPC and that they have been requested by the HPC to examine the financial implications of salaries. The Ministry of Finance and Economic Development was written to and requested to make necessary arrangement to recover the three increments paid to the relevant officers because they were not entitled to the increments. She conceded that the decision of the Standing Committee would also apply in the case of the other officers who have been appointed in the post of ICO/SICO. When asked if officers in her Ministry are still receiving the three increments, Mrs Gungaram stated that they are awaiting the outcome of the present case before the Tribunal. She added that even the Ministry of Finance and Economic Development, the parent Ministry for ICO/SICO, is aware that such payments are still being made.

Mrs Gungaram suggested that the Co-Respondent No 1 first became aware of the inconsistent application of the provisions of the PRB Report on 21 March 2018 when the Ministry of Social Security wrote to them for advice. She agreed when it was suggested to her that the Standing Committee found that the qualifications required for the post of ICO/SICO were of a completely different line than those required for the post of MSO. Mrs Gungaram also agreed that the particular Recommendation involved in the present case applies to the whole service and not only to ICO/SICOs. The Standing Committee on remuneration was set up for the first time in 2017 and looks into cases of salary on promotion.

Mr Ganoo, Principal Job Analyst at Co-Respondent No 2 then deposed before the Tribunal and he solemnly affirmed to the correctness of the contents of the Statement of Reply filed on behalf of Co-Respondent No 2. He referred to recommendations in the PRB Reports of 1993 and 1998 which did not contain the Recommendation being discussed in the present case. The Recommendation under discussion was first introduced in the 2003 PRB report and then was reproduced in the successive 2008, 2013 and 2016 Reports. In the 2013 PRB Report, the Recommendation was there but the Errors, Omissions and Anomalies Committee (EOAC) did away with that Recommendation. Mr Ganoo suggested that the Recommendation was waived by an Independent Salary Commissioner and in 2013,

the 'three increments' was introduced again. In 2016 however, the Recommendation which applies to serving officers was introduced again in the 2016 PRB Report. He stated that there is a Standing Committee which looks into problems arising out of implementation issues in relation to this Recommendation. He stated that since the Disputant holds a H.S.C qualification and applied for a post requiring part of the ACCA qualification, according to the Standing Committee, that was a qualification of a different line. The matter was thus to be considered under Recommendation 18.8.10 (of the 2016 PRB Report).

In cross-examination, Mr Ganoo agreed that in 1998, there was no mention made about qualification of a completely different line. When it was suggested to Mr Ganoo that the 'Fundamentals' required for ICO/SICO constitute only qualification along a different line from the qualification for MSO, and not qualification of a completely different line, the latter minimized the importance of the use of the word "completely" in Recommendation 18.8.10(iii) of the PRB Report 2016.

The Tribunal has examined all the evidence on record including the submissions of all counsel. The Disputant was appointed ICO/SICO in a temporary capacity on 3 July 2017 and she was subsequently appointed in a substantive capacity effective as from the same date. In the light of the Statements of Case/Reply/Defence filed in the present case and the evidence adduced, the only reasonable conclusion is that the Disputant was governed by the PRB Report 2016. Though no option form has been produced or referred to before us, the Tribunal will refer specifically to paragraph 12 of the Statement of Reply of Respondent and paragraph 9 of the Statement of Defence of Co-Respondent No 1. In these paragraphs, the Respondent and Co-Respondent No 1 aver that Disputant "is governed by the PRB Report 2016". There is absolutely no evidence to the contrary on record. To be able to proceed further ahead, the Tribunal will thus assume (highlighting is ours) that Disputant opted to be governed and was indeed governed by the PRB Report 2016.

Paragraph 18.8.9 and 18.8.10 of the said report read as follows:

Recommendation 1

18.8.9 We recommend that all promotions, in general, should be marked by an increase in salary. An officer, on promotion, should join the initial salary or flat salary of the higher grade or where the salary overlaps be granted a maximum of three increments subject to the top salary of the higher grade, whichever is higher, provided the total emoluments of the officer should not be less than the initial salary and not more than the maximum salary of the higher grade.

18.8.10 However, the under-mentioned provisions should apply in the following specific cases:

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

(ii) 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 salary of the senior officer(s) should be adjusted so that the senior officer(s) as well as the junior officer draw the same salary as from the date the officer junior to him has been appointed in that grade.

(iii) where a serving officer applies for a grade in the service requiring qualifications of a completely different line than those of his grade, the officer on appointment, joins the grade at the initial of the scale or retains the salary of his previous grade, whichever is the higher;

(iv) the salary of an officer who is promoted after having benefitted from the grant of long service increment should be adjusted by the grant of an aggregate not exceeding three increments, inclusive of the increment/s previously obtained for long service.

It is also apposite to refer to paragraphs 18.8.1 to 18.8.8 of the PRB Report 2016 which include at paragraph 18.8.4 a brief résumé of the changes brought to the recommendations in relation to “salary on promotion” via different PRB reports. These read as follows:

18.8 Salary on Promotion

18.8.1 In accordance with the PSC Regulations, promotion is defined as the conferment upon a person in the Public Service of a public office to which is attached a higher salary or salary scale than that attached to the public office to which the officer was last substantively appointed or promoted.

18.8.2 Promotion is of two types: class-to-class and grade-to-grade and according to the Human Resource Management Manual (HRMM), these two terms are defined as follows:

(i) "class-to-class promotion" means promotion to a rank which entails greater responsibilities of a different nature to those previously undertaken and performed; and

(ii) "grade-to-grade promotion" means promotion in a higher grade in the same hierarchy which entails greater responsibilities of the same nature to those previously undertaken and performed.

18.8.3 *At present, an officer, on promotion, joins the initial or flat salary of the higher grade or is granted a maximum of three increments at the incremental point reached subject to the top salary of the higher grade, whichever is higher, provided the total emoluments of the officer is not less than the initial salary and not more than the maximum salary of the higher grade.*

18.8.4 *The grant of three increments on promotion, representing an immediate pay increase of around 10%, and which was first introduced in 1987 is not only fair, but also in line with international practice. However, salary administrators had been faced with a number of difficulties in the implementation of this recommendation particularly in cases where junior officers supersede salarywise senior officers. For this reason, that recommendation was not retained in the 1993 PRB Report, but was reintroduced in the 1998 PRB Report for grade-to-grade promotion only. In 2003, at the request of the staff side and also convinced of its reasonableness and fairness, the Bureau extended the grant of three increments to class-to-class promotion as well, but with certain complementary provisions and safeguards. The application of the three increments rule in both grade-to-grade and class-to-class promotion was maintained in the subsequent 2008 and 2013 PRB Reports.*

18.8.5 *In this Report, we are again maintaining the principle that all promotions should generally be marked by an increase in salary.*

18.8.6 *The undermentioned provisions are applied in the following specific cases:*

(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 draws the initial salary of the promotional grade or receives one increment if he was drawing the same salary point or more than the initial salary of the promotional grade.

(ii) 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 salary of the senior officer(s) is adjusted so that the senior officer(s) as well as the junior officer draw(s) the same salary as from the date the officer junior to him has been appointed in that grade.

(iii) the salary of an officer, who is promoted after having benefitted from the grant of long service increment, is adjusted by the grant of an aggregate not exceeding three increments, inclusive of the increment/s previously obtained for long service.

18.8.7 *The Bureau has received representations from the Federations to the effect that all promotion should be marked by at least three increments over and above the provision of the Long Service Increment. We have studied the request which is not justified as Long Service Increment is effectively granted to compensate officers for lack of promotion prospects.*

18.8.8 In general, the present arrangements for the grant of salary on promotion have met the desired objectives among the stakeholders and we are not bringing any major changes in the existing provisions.

Guidance may be obtained by analysing the various changes brought to the recommendations and observations made in successive PRB reports in relation to “salary on promotion”. From a perusal of the above résumé and bearing in mind how Recommendation 1 Paragraph 18.8.10(iii) of the PRB Report 2016 has been drafted, the Tribunal is of the view that the “qualifications of a completely different **line**” (highlighting is ours) than those of the actual grade of the serving officer do not refer necessarily and only to (educational/professional) qualifications of a higher level in the sense relied upon by the Disputant, that is, where there is a shift from qualifications of a general nature to professional ones. The case of the Disputant before us was based on the averment that the qualifications required for the post of ICO/SICO were not professional qualifications as such but only components of a qualification. This may well be the case in the present matter. However, what matters most is whether the qualifications required for the grade of ICO/SICO were of a completely different line than those of the grade of Clerical Officer/Higher Clerical Officer. The term used, “qualifications of a completely different line” is very specific and connotes more than just a difference between levels of qualification. The words used indicate that the qualifications for the grade applied for are “tangential” (in relation to a line) to the qualifications required for the actual grade of the applicant, that is, the qualifications for the actual grade of the applicant are of superficial relevance only for the qualifications of the grade applied for. The Disputant before us did not proceed at all along this line.

There is evidence that the matter was referred to the Standing Committee (referred to at paragraph 18.8.14 of the PRB Report 2016) on no less than three occasions and that the Committee maintained that the applicable provision was paragraph 18.8.10(iii) of the PRB Report 2016 (and not paragraph 18.8.9). Though the “recommendations” of the Standing Committee under paragraph 18.8.14 of the PRB Report 2016 are nowhere stated to be binding, the Tribunal cannot simply ignore the evidence led on this issue. The Disputant has the **burden of proof** (highlighting is ours) to show on a balance of probabilities that her appointment to the grade of ICO/SICO should be based on Recommendation 1 Paragraph 18.8.9 of the PRB Report 2016 and not on Recommendation 1 Paragraph 18.8.10(iii) of the said report. Disputant has failed to do so and the Tribunal has no discretion at all in the circumstances to make any assumption that the appointment of Disputant to the grade of ICO/SICO should be based on Recommendation 1 Paragraph 18.8.9 of the PRB Report 2016. Also, and very importantly, the more so in the light of the difficulties highlighted above in the implementation of the recommendations in relation to salary on promotion following successive PRB reports, the Tribunal finds that the Disputant has not addressed her mind at all to one main item under “Qualifications” for the post of ICO/SICO (vide Doc 2 annexed to the Statement of

Case of Disputant) whereby initially selection is to be done from “among serving officers who hold a substantive appointment”. Mrs Gungaram, very importantly, stated the following “The post of Management Support Officer is filled by way of public advertisement that is the post is advertised to the general public while the post of Internal Control is filled by selection from among serving officers who hold the required qualifications as is stated in the scheme of service.” The Tribunal will leave open the question whether the qualifications envisaged in paragraph 18.8.10(iii) of the PRB Report 2016 include non educational/professional qualifications since none of the parties dealt with this issue though it was hinted at in the examination-in-chief carried out by counsel for Co-Respondent No 2. In the light of the evidence on record and the particular circumstances of this case, the Tribunal is unable to say that the Standing Committee erred or that the decision communicated to Disputant that paragraph 18.8.10(iii) of the PRB Report 2016 was applicable to her appointment as ICO/SICO was wrong.

The Tribunal will not allow itself to be swayed by the evidence on record that the appointment of ‘other’ officers to the grade of ICO/SICOs may have been based, rightly or wrongly, on Recommendation 1 Paragraph 18.8.9 of the PRB Report 2016. Finally, a careful examination of the manner in which the terms of reference have been couched, reveals that an award of a declaratory nature is being sought from the Tribunal. The Tribunal does not deliver awards which are of a **declaratory nature (vide Mr Ugadiran Mooneepen And The Mauritius Institute of Training and Development, RN 35/12; Mr Abdool Rashid Johar And Cargo Handling Corporation Ltd, RN 93/12; Mr Dhan Khednee And National Transport Corporation, RN 52/14; Mr Satianund Nunkoo And Beach Authority, RN 121/17)**. The Tribunal delivers awards which are binding on parties (Section 72 of the Act).

For all the reasons given above, the Tribunal finds that the dispute cannot stand and the case is set aside.

SD Indiren Sivaramen
Vice-President

SD Abdool Kader Lotun
Member

SD Abdool Feroze Acharauz
Member

SD Ghianeswar Gokhool
Member

17 December 2019