

EMPLOYMENT RELATIONS TRIBUNAL

AWARD

ERT/RN 88/2023

Before: -

Shameer Janhangeer	-	Vice-President
Greetanand Beelattoo	-	Member
Ghianeswar Gokhool	-	Member

In the matter of: -

Mrs Dharshini SEENUNDUN

Disputant

and

DEVELOPMENT BANK OF MAURITIUS LTD

Respondent

In presence of: -

Mrs Hema Malini GOOLAUB

Co-Respondent

The present matter has been referred to the Tribunal for arbitration by the Commission for Conciliation and Mediation pursuant to *section 69 (9)(b)* of the *Employment Relations Act*. The Terms of Reference of the dispute reads as follows:

Whether the selection exercise held in February 2019 for the post of Assistant Manager Legal, Contentieux and Procurement following notice of internal vacancy dated 12 December 2017 was not defective, procedurally flawed and misleading and therefore, prejudicial to me in as much as the position advertised was for specific units and appointment made was for a completely new unit for which no advertisement was ever made.

All parties were assisted by Counsel. Mr G. Bhanji Soni appeared for the Disputant instructed by Mr V. K. Dwarka, SA; whereas Mr M. Ajodah appeared for the Respondent instructed by Mr K. K. Nair; and Mr D. Dodin appeared for the Co-Respondent. Each party has submitted their respective Statement of Case in the present matter.

THE DISPUTANT'S AMENDED STATEMENT OF CASE

The Disputant was appointed as Legal Officer at the Development Bank of Mauritius Ltd ("DBM") since 15 May 1995. In May 2014, she was nominated as the Officer-in-Charge of the Legal Unit. As at March 2016, she headed the Legal Unit and Mrs Goolaub headed the Contentieux Unit. In the same month, the Board decided to merge the Legal Unit and the Contentieux Unit. On 19 August 2016, she was appointed Officer-in-Charge of the Legal and Contentieux Units and the Co-Respondent was posted in the Industrial Estates Department.

In October 2016, it was decided to fill vacancies in the grade of Assistant Manager and the posts were advertised in October 2016. Despite interviews, there were no appointments. In December 2017, the Respondent invited applications for the post of Assistant Manager for twelve separate Units, among being one post for Assistant Manager of the Legal Unit and another for Assistant Manager in the Contentieux Unit. The Disputant was called for an interview on 18 July 2018 in the Boardroom. The Disputant attended the interview but was not informed whether it was for the post of Assistant Manager, Legal Unit or for the Contentieux Unit. The interview was carried out by the Chairman, the Managing Director and one Board member. On 27 February 2019, the Disputant was surprised to note that the Legal Unit and the Contentieux Unit had been merged again with any announcement from the Board and that the Co-Respondent was appointed as Assistant Manager Legal, Contentieux and Procurement Unit despite the fact that such Unit did not exist at the time of the interview.

The Disputant complains that such acts by the Respondent are unjustified and amount to procedural impropriety inasmuch as the positions advertised were for specific Units, whereas the appointment process disregarded these specific Units and selected appointees for completely new Units for which no advertisement was ever made. The Disputant feels aggrieved as her contribution to the Legal and Contentieux Units have been ignored as the Co-Respondent has

never acted in the capacity as Head of Legal at any point in time prior to her present appointment. The appointment exercise is procedurally flawed and against the principles of good governance as an Assistant Manager for DBM Financial Services (“DBMFS”) was on the selected list. The Disputant has had no adverse report and has handled the responsibilities of both Units from August 2016 to February 2019. The Disputant has been assigned additional responsibilities as Compliance/Data Protection Officer since September 2020 reporting to the Chief Executive Officer. The Tribunal is being asked to review the appointment process of Assistant Manager Legal, Contentieux and Procurement Units in light of the facts and the quash the present appointment and order that a fresh appointment exercise be carried out with clear and transparent rules.

THE RESPONDENT’S STATEMENT OF DEFENCE

The Respondent has notably averred that the selection exercise for the post of Assistant Manager in the Legal and Contentieux Unit has been carried out in a fair and transparent manner and that the Disputant was rightly not selected for the post of Assistant Manager. The Disputant was not nominated as Officer-in-Charge of the Legal Unit but following the pre-retirement leave sought by Mr Atmarow, it was decided that Disputant would assume the aforesaid responsibility as from August 2014 until March 2016, when the Legal Unit and Contentieux Unit were both merged. The Board of Directors took note that there was a lack of fair and equitable sharing of work between the Legal Unit and Contentieux Unit and that several shortcomings were reported in both their operations. To optimise human resource capital, the two Units were merged and headed by the Assistant Manager, Mr S.T. Gowrisunkur and both the Disputant and Co-Respondent were posted in the new Unit reporting to the former. In August 2016, management decided to reallocate responsibilities such that Disputant was responsible for the management of the Legal and Contentieux Unit and Co-Respondent posted in the Industrial Estates Department.

It is admitted that in October 2016, it was decided to fill vacancies in the grade of Assistant Manager and the posts were advertised in October 2016. Despite interviews, there were no appointments. In December 2017, the Respondent invited applications for the post of Assistant Manager for twelve separate Units, among being the one post for Assistant Manager of the Legal Unit and another for Assistant Manager in the Contentieux Unit. The Disputant was called for an interview on 18 July 2018 in the Boardroom. As per a Circular dated 20 April 2018, the employees were notified that promotion at all levels could entail written examination followed by an

interview. The candidates were interviewed for the generic post of Assistant Manager and although they had applied for several posts, they were called for only one interview and assessed for the post they had applied. The Legal and Contentieux Units had been merged since March 2016 as such as the appointment of an Assistant Manager for each separate Unit does not apply. The post is generic in nature and incumbents can be posted at any Department or Unit performing duties according to their posting.

It has further been averred that no new Unit was created by the Respondent and as the two Units had been merged since March 2016. Each candidate was given the opportunity to be appointed as Assistant Manager for the posts they applied and they were assessed for these posts. The Disputant did not achieve the required pass mark and was not selected. The Respondent had reserved its right not to make any appointment for the posts advertised. The Co-Respondent was never found unsuitable to head the Contentieux Unit and was appointed as Assistant Manager of the Legal and Contentieux Unit. The Disputant was never appointed as Head of Legal Unit but was requested to assume the responsibility of Officer-in-Charge of the said Unit. Such assignment does not confer any preference or privilege when a vacancy for the post has to be filled by selection. The DBMFS is a wholly owned subsidiary of the Respondent and its employees at the level of Assistant Manager have often been assigned duties at the DBMFS. In their letters of appointment, Assistant Managers were informed that they may be posted at any of the Respondent's Unit/s or Branches and they may also be required to serve on a tour of service in Rodrigues. It is denied that the Disputant has had no adverse report.

The Respondent has denied the Disputant's prayer and averred that the selection exercise was fair, impartial and regular in all material aspects; the Co-Respondent was appointed as Assistant Manager upon recommendations of the interview panel; and the Disputant did not achieve the required pass mark set by the interview panel and was hence not selected for the post of Assistant Manager.

THE CO-RESPONDENT'S STATEMENT OF DEFENCE

The Co-Respondent has notably averred that she was appointed as Assistant Manager of the Legal and Contentieux Unit following a selection exercise listed in the Internal Vacancy Notice dated 12 December 2017. She was appointed as Legal Officer on 1 September 1993 some 1 ½ years prior to the Disputant's appointment. As per the office memorandum dated 6 August 2014,

the Disputant was not nominated as Officer-in-Charge as averred by her. As per the office memorandum dated 21 April 2014, the Co-Respondent was nominated Officer-in-Charge already being posted in the Contentieux Unit. Officer-in-Charge does not exist in the Respondent's organigram and is merely an appellation. In March 2016, the Board announced that the Legal and Contentieux Units would be merged and the merged Unit would be supervised by an Assistant Manager with a non-legal background.

It has also been averred that the post of Assistant Manager was advertised by Internal Vacancy Notice dated 12 December 2017. Following the appointment of a new Managing Director in 2018, a circular dated 20 April 2018 was issued informing all staff that henceforth promotion at all levels could entail written examination followed by an interview. No psychometric test was conducted and same is not relevant to the present dispute. The Respondent was aware of the Units the candidates had applied for and the interview was carried out in relation to the post of Assistant Manager for the relevant Units each candidate had applied. As per her letter of appointment dated 22 February 2019, the Co-Respondent was appointed as Assistant Manager to be posted in the Legal and Contentieux Unit. She was also requested to extend her help regarding procurement tasks and she agreed to continue with her procurement tasks over and above her responsibilities as Assistant Manager of the Legal and Contentieux Unit. The procurement works remained with her for some 4 to 5 months after which it was transferred back to the Industrial Estates Department.

It has also been averred that neither the Respondent's Board nor management have ever stated that the Co-Respondent was unsuitable to head the Contentieux Unit in March 2016. The Co-Respondent has the qualifications, experience, merit and seniority required for the post of Assistant Manager of the Legal and Contentieux Unit and passed the selection exercise conducted for the post. The Disputant has never been Head of the Legal Unit but its Officer-in-Charge. The Co-Respondent has been fulfilling the said post for some four years now and there has not been any instance of her being unacquainted with the processes of the Unit. Whilst the post of Assistant Manager DBMFS was not advertised, the appointment of an Assistant Manager for DBMFS cannot invalidate the appointment of the Co-Respondent as Assistant Manager of the Legal and Contentieux Unit.

THE EVIDENCE OF WITNESSES

Mrs Dharshini Seenundun was called to depone and swore as to the correctness of her (Amended) Statement of Case together with its annexures. She notably stated that there was an advertisement for the post of Assistant Manager for twelve Units dated 12 December 2017 (identified as Annexure B to her Amended Statement of Case) and she applied to the Legal Unit and the Contentieux Unit. The interview was held in July 2018 and the questions asked of her were only regarding the Legal Unit and so, she was expecting another interview for the Contentieux Unit. In February 2019, there were nominations for the post of Assistant Manager, including that for Legal, Contentieux and Procurement when Procurement was not even mentioned among the twelve Units of the advertisement. The Co-Respondent was appointed and she cannot understand how such a nomination could be effected.

The Disputant also stated that she was Officer-in-Charge of Legal and Contentieux identifying Annexure A of her Amended Statement of Case in this respect. She was also assigned duties of Compliance and Data Protection Officer till 1 March 2024. Annexure E of her Amended Statement of Case is the circular appointing the Co-Respondent together with other members of staff to the post of Assistant Manager. She does not accept that the appointments were done in a fair and transparent manner. Legal and Contentieux were merged since March 2016, but when the posts were advertised, they were separate Units and this is why she applied for two posts. It is not right to call the post of Assistant Manager as generic in nature as one would need specific knowledge and skills for certain departments. Regarding the Co-Respondent's suitability to head the Contentieux Unit, she stated that she was called by the Board and was explained that there were problems in Contentieux which she needed to attend to.

The Disputant moreover stated that she does not agree that in being the Officer-in-Charge of the Legal Unit, there is no privilege or preference to her when a vacancy for the post has to be filled for selection. She does not agree that the post of Assistant Manager is one grade higher than Senior Development Officer as averred by the Co-Respondent but agreed that the latter has seniority over her. The grade of Officer-in-Charge is not in the organigram. She invited the Tribunal to review the appointment process and that a fresh appointment exercise be carried out; and is asking for the selection exercise to be reviewed.

The Disputant was thoroughly questioned by Counsel for the Respondent. She notably replied that she agreed that there is no such Unit as Legal, Contentieux and Procurement. She agreed that she was not nominated as Officer-in-Charge of the Legal Unit but assumed responsibility as Officer-in-Charge in the Legal Department and produced a letter dated 6 August 2014 (Document A) from the Respondent to this effect. She agreed that Mrs Goolaub had been responsible for the Contentieux Unit as Officer-in-Charge since April 2014. She did not agree that the Board noted that there were several shortcomings in the operation of the Legal and Contentieux Units. She was Officer-in-Charge of the Legal and Contentieux Unit. The selection exercise was carried out on 18 July 2018 and the appointments made on 27 February 2019. She did not agree that she did not lodge any protest that only one interview was done between the selection and appointment exercise as she did raise the issue with the then Managing Director. This is not mentioned in her Statement of Case.

The Disputant agreed that before she went for the interview, she could not have known that it was supposedly for the Legal Unit. She did not agree that the interviews carried out were for the generic post of Assistant Manager. She did not agree that the candidates who applied for several posts were called for only interview and were assessed for the various posts based on one interview. She is not aware of any Board decision separating the Legal and Contentieux Unit but given that the advertisement was for separate Units, she was made to understand that separate Units would be in place. She does not agree that there was no Legal, Contentieux and Procurement Unit at the time of the nomination. She agreed that Applicants were given marks on different criteria at the interview. She is not aware of her marks as a result of the interview nor of the marks of the Co-Respondent. She is not aware that she did not achieve the minimum required pass marks, because of which she was not appointed as Assistant Manager.

The Disputant, moreover, did not agree that the selection panel's decision was based on specific criteria and not merely on the question of her contribution to the Legal and Contentieux Unit. She did agree that she was requested to carry out her supervisory and managerial role properly as a deed of loan had not been properly drafted and vetted but this related to the work of another officer. Being referred to the Co-Respondent's letter of appointment dated 22 February 2019, she did not agree that the only appointment made was to the post of Assistant Manager nor that the letter states that posting is in the Legal and Contentieux Unit. She could not explain why in a Memorandum dated 5 July 2019, reference is made only to Legal and Contentieux Department and not to Procurement. She also agreed that this was not mentioned in an office memorandum dated 21 April 2014 (Annex B to the Co-Respondent's Statement of Defence).

Upon being questioned by Counsel for the Co-Respondent, the Disputant notably stated that she is aware that Mrs Goolaub was appointed before her but is not aware of her qualifications. She agreed that for the purpose of the selection exercise no psychometric test was conducted upon protest being made. She has no document in support of the averment in her Amended Statement of Case that the Co-Respondent was found unsuitable to head the Contentieux Unit. She agreed that selection for the post cannot be based solely on her contribution to whatever Unit.

Mr Deoraz Hosanee, Company Secretary at the DBM Ltd, was called on behalf of the Respondent. He solemnly affirmed as to the truth of the Respondent's Statement of Defence. He also stated that the Disputant holds a Bachelor in Law whilst the Co-Respondent holds a Bachelor in Law and an MBA. He produced an extract of the notes of meeting of the Board dated 25 February 2016 (Document B) regarding the merger of the Legal and Contentieux Units in March 2016. Regarding the appointments made in 2018, the Board appointed the staff recommended by the interview panel to the post of Assistant Manager at its meeting of 19 February 2019. An extract of the Board meeting of the aforesaid date was produced to this effect (Document C). The memorandum dated 27 February 2019 (Annex E to the Disputant's Amended Statement of Case) reflects the Board's decision.

Upon questions from Counsel for the Disputant, Mr Hosanee notably stated that following the merger of the Legal Unit and Contentieux Unit, Mr Gowrisunkur was appointed as Head. The Units were already merged since March 2016 and were not separated and then merged again. It was a decision of the Board to advertise the Units separately for the selection exercise. When the appointment was made, it was for the merged Unit. The selection criteria were set by the interview panel based on qualifications, experience, appearance, personality, knowledge of work and communication skills. The Co-Respondent was Officer-in-charge of the Contentieux Unit prior to the selection exercise. There is no Procurement Unit at the bank and the memorandum dated 27 February 2019 informs staff that Mrs Goolaub will still continue to do the procurement works of the Industrial Estate Department. He produced the Co-Respondent's letter of appointment dated 22 February 2019 (Document D), which does not make any mention of the Procurement Unit. He does not agree that the Co-Respondent had less experience than the Disputant and this is why the selection exercise is flawed. The candidates were given the opportunity to apply for any post out of the twelve that were advertised. Upon a question from

Counsel for the Co-Respondent, Mr Hosanee confirmed that the appointments made were decisions of the Board.

The Co-Respondent, Mrs H. Goolaup, was called to adduce evidence and affirmed as to the truth of her Statement of Defence. She notably stated that she agrees with the Respondent's representative. She passed the interview and was selected based on all the criteria. She has almost 30 years' experience at the bank. Before her appointment in February 2019, she was handling procurement duties for the Industrial Estate Department and she was requested by management to extend her help to procurement works until a decision was taken to send the files back to the Industrial Estate Department or find someone else to do the work. She did this until June 2019, when files were then transferred to the Industrial Estate Department. She has no adverse report for her 30 years. When questioned for Counsel for the Disputant, she stated that she was Officer-in-Charge of the Contentieux Unit and could not have attended cases for the Legal Unit. Both Units handle legal cases and her main job is to attend court cases.

THE SUBMISSIONS OF COUNSEL

Learned Counsel for the Disputant stated that he rests his case on the Disputant's Statement of Case. On the other hand, Learned Counsel for the Respondent and for the Co-Respondent have each put in written submissions. Learned Counsel for the Respondent has notably submitted that there was no selection exercise in February 2019 as can be read from the Terms of Reference. An interview was held in July 2018 and there was an appointment exercise in February 2019. Document C shows that appointments were made in February 2019 and that there was no selection exercise. Counsel has referred a series of judgments in submitting that parties are bound by their pleadings and the Tribunal is also bound by the pleading of the parties. It was also submitted by Counsel for the Respondent that there was no post of Assistant Manager Legal, Contentieux and Procurement making reference to the wordings of the Terms of Reference. Thirdly, it was submitted that Legal and Contentieux is not a new Unit having been in existence since 2016. Fourthly, the Disputant was not selected as she had not received minimum marks required by the selection panel and the Respondent's representative was not cross-examined on this issue, which is a central issue for the Respondent. It was also submitted that matters of promotion are within the province of the employer and that the post of Assistant Manager is generic in nature.

Learned Counsel for the Co-Respondent has submitted that he concurs with the submissions of his Learned Friend for the Respondent. Regarding the procedural aspect of his submissions, Counsel notably stated that the Tribunal is being asked to give a declaratory award and that the Terms of Reference is inviting the Tribunal to embark upon an adjudication which is declaratory in nature as to the selection exercise. Secondly, as per the Disputant's Amended Statement of Case, she is asking for the appointment to be quashed and that a fresh appointment exercise be carried out. This is however not within the ambit of the Terms of Reference. The Disputant, in examination-in-chief, did also ask for a fresh appointment exercise to be carried out but this is not contained in the Terms of Reference. Procedurally, the dispute cannot stand and therefore no award can come out of this.

Learned Counsel for the Disputant has submitted in reply to the submissions of the Respondent and the Co-Respondent. It was notably stated that it is not law that the parties are bound by the pleadings and that the Statement of Case is not akin to pleadings in a court of law. The matter has been referred by the CCM and the Terms of Reference have been prepared by them. The Disputant is saying that there was a vacancy for Assistant Manager for Legal and for Contentieux. The interview was in July 2018 and the appointment in February 2019. When this was made, there was a different appointment for Legal, Contentieux and Procurement. This is the issue before the Tribunal and the Tribunal must see whether this is permissible or not. The issue is whether the appointment exercise in February 2019 is in line with the vacancy in July 2018.

THE MERITS OF THE DISPUTE

The Terms of Reference of the dispute in the present matter is asking the Tribunal to determine whether the selection exercise held in February 2019 for the post of Assistant Manager Legal, Contentieux and Procurement following the internal vacancy dated 12 December 2017 was not defective, procedurally flawed and misleading and therefore prejudicial to the Disputant inasmuch as the position advertised was for specific Units and the appointment made was for a completely new Unit for which no advertisement was made.

The Disputant, in August 2016, was assuming responsibility of the Legal and Contentieux Units and the Co-Respondent was posted at the Industrial Estates Department. On 12 December 2017, the Respondent invited applications for the post of Assistant Manager in twelve Units,

among being the Legal Unit and the Contentieux Unit. The Disputant applied for the Legal Unit and Contentieux Unit and was called for an interview on 18 July 2018. On 27 February 2019, the Disputant was apprised, by a memorandum of the same date, that the Co-Respondent has been appointed as Assistant Manager Legal, Contentieux and Procurement and she was also surprised to note that the Legal and Contentieux Units had been merged again.

The Terms of Reference of the dispute refer to a selection exercise held in February 2019. However, as per the evidence adduced in the present matter, the post of Assistant Manager was advertised on 12 December 2017 and the interviews were conducted on 18 July 2018. Thereafter, the staff were notified of appointments to the posts of Assistant Manager by memorandum dated 27 February 2019 (Annex E to the Disputant's Amended Statement of Case). It should also be noted that the Respondent's Board appointed the staff as recommended by the interview panel to the post of Assistant Manager at its meeting of 19 February 2019 (as per Document C) and the Co-Respondent was appointed to the post of Assistant Manager by letter dated 22 February 2019 (Document D). Moreover, Counsel for the Disputant has recognised that the appointment was made in February 2019 in his submissions. It would not therefore be correct to state that the selection exercise was conducted in February 2019 as is being averred in the Terms of Reference of the dispute.

It has also been contended that appointment was made for a completely new Unit for which no advertisement was made. It has not been disputed that the vacancy notice dated 12 December 2017 for the posts of Assistant Manager (Annex B to the Disputant's Amended Statement of Case) was in relation to twelve different Units and as per its mode of application, candidates could apply for the post for more than one Unit. The Legal and Contentieux Units were listed separately despite having been merged in 2016 as per a Board decision dated 25 February 2016 (Document B). As per the Respondent's representative, it was a Board decision to advertise these two Units separately.

As per the memorandum dated 27 February 2019, the Co-Respondent was appointed as Assistant Manager Legal, Contentieux and Procurement. However, as per her appointment letter dated 22 February 2019, it has been clearly stated that she would be posted in the Legal and Contentieux Unit. This shows that the Co-Respondent has been posted, as Assistant Manager, to Legal and Contentieux as one Unit which were merged in 2016. Regarding the reference made to procurement in the memorandum dated 27 February 2019, the Co-Respondent has satisfactorily explained that she was handling procurement duties at the Industrial Estates Department when

she was appointed as Assistant Manager and was requested by management to continue with the procurement duties she was handling and did so up to June 2019. Thus, as her appointment letter, the Co-Respondent was not appointed to any new Unit which included procurement.

The memorandum dated 27 February 2019 is therefore misleading in stating that the Co-Respondent was appointed as Assistant Manager Legal, Contentieux and Procurement when considering the Co-Respondent's appointment letter. It would not therefore be correct to say that the Co-Respondent was appointed to a new Unit for which no advertisement was made given that the Legal and Contentieux Units were merged as far back as 2016 and that there was no appointment to any 'Procurement Unit' which, in any event, was not listed among the twelve Units in the internal vacancy dated 12 December 2017. Even though the Legal and Contentieux Units were advertised separately, it has not been disputed by that the two Units were merged in 2016. Moreover, it is also incorrect for the Terms of Reference to aver that the selection exercise was for the post of Assistant Manager Legal, Contentieux and Procurement when, as per the vacancy notice, the posts for Assistant Manager advertised were in relation to twelve Units.

The Terms of Reference as worded do not therefore reflect the actual facts of the dispute as borne out by the evidence on record. It is important to note that Terms of Reference need to be properly formulated and must be complete within themselves; they remain the basis on which disputes must be examined (*vide Greedharee and Mauritius Ports Authority & Anor (ERT/RN 258/11)*).

It should also be noted that as per the Terms of Reference, the Tribunal is being asked to determine whether the selection exercise for the post of Assistant Manager was not defective, procedurally flawed and misleading for the reason that the position was for specific Units and the appointment was made for a completely new Unit. The Tribunal is therefore being asked to make as declaration as per the Terms of Reference as has been submitted by Counsel for the Co-Respondent.

It is apposite to note that the Tribunal has cautioned against the making of declaratory awards in relation to disputes referred to it as may be noted from what was stated in *Cheddy and Ministry of Labour, Industrial Relations, Employment and Training (ERT/RN 120/15)* in relation to declaratory awards:

The Tribunal has on numerous occasions highlighted that it does not generally give declaratory awards (vide Mr Ugadiran Mooneepen and Mauritius Institute of Training and Development, ERT/RN 35/12 and Mr Abdool Rashid Johar and Cargo Handling Corporation Ltd ERT/RN 93/12).

The following may be also noted from what was stated by the Tribunal in *Mooneepen and Mauritius Institute of Training and Development (ERT/RN 35/12)*:

The Tribunal is being merely asked to give a declaratory award on whether the Respondent should have proceeded with the interview or not. We quote here what was held in Planche v. The PSC & Anor [SCJ 128 of 1993]: -

*“It seems to us that this application is incompetent if only for the reason that the question in issue is now purely an academic one. We can do no better than echo the dictum of Lord Justice Clerk Thomson in *McNaughton v McNaughton’s Trs, (1953) SC 387, 392: -**

“Our courts have consistently acted on the view that it is their function in the ordinary run of contentious litigation to decide only live, practical questions, 26 and that they have no concern with hypothetical, premature or academic questions, nor do they exist to advise litigants as to the policy which they should adopt in the ordering of their affairs. The courts are neither a debating club nor an advisory bureau.”

The Disputant has rested her case on the Amended Statement of Case as per the submissions of her Counsel. As the conclusion stated therein, the Tribunal is notably being asked to quash the present appointment and to order a fresh appointment exercise be carried out with clear and transparent rules. Having regard to the wordings of the Terms of Reference, it can be noted that the remedies prayed for in the Amended Statement of Case are not to be found therein.

It would therefore be *ultra vires* for the Tribunal to pronounce itself what has been prayed for in the Disputant’s Amended Statement of Case when considering what was held in *Air Mauritius Ltd v Employment Relations Tribunal [2016 SCJ 103]*:

Under section 70 (1) the Tribunal is required to enquire into the substance of the dispute that is referred to it and to make an award thereon and it is not empowered to enquire into any new matter that is not within the terms of reference of the dispute.

In view of the above, the Tribunal cannot find that the selection exercise held in February 2019 for the post of Assistant Manager Legal, Contentieux and Procurement following the notice of internal vacancy dated 12 December 2017 was defective, procedurally flawed and misleading and therefore prejudicial to the Disputant inasmuch as the position advertised was for specific Units and appointment made was for a completely new Unit for which no advertisement was ever made as is being asked for in the Terms of Reference of the dispute.

The dispute is therefore set aside.

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(SD) Shameer Janhangeer
(Vice-President)

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(SD) Greetanand Beelattoo
(Member)

.....
(SD) Ghianeswar Gokhool
(Member)

Date: 18th July 2024