

EMPLOYMENT RELATIONS TRIBUNAL

AWARD

ERT/ RN 97/24

Before

Indiren Sivaramen	Acting President
Greetanand Beelattoo	Member
Dr Sunita Ballah-Bheeka	Member
Venussha Autar	Member

In the matter of: -

Mr Lewis Guilbert Roussel (Disputant)

And

Central Electricity Board (Respondent)

i.p.o Central Electricity Board Staff Association (Co-Respondent)

The above case has been referred to the Tribunal by the Commission for Conciliation and Mediation under Section 69(9)(b) of the Employment Relations Act, as amended (hereinafter referred to as “the Act”). The Co-Respondent has been joined as a party in the present matter in the interests of justice following a motion made by Counsel for the Disputant and to which there was no objection on the part of Counsel for the Respondent. All parties were assisted by Counsel. The terms of reference of the dispute read as follows:

“Central Electricity Board is, up to now, refusing to consider my request for additional increments under the ‘Long Service Increments’ Scheme, as contained in the Collective Agreement.”

The Disputant deponed before the Tribunal and he swore as to the correctness of the contents of his amended Statement of Case. He produced copies of his letter of appointment as Senior Technical Officer (Mechanical) (Doc A1), the Collective Agreement between the Respondent and the Co-Respondent for the period 1 July 2017 to 30 June 2021 (Doc B1) and the Collective Agreement between the Respondent and the Co-Respondent for the period 1 July 2021 to 30 June 2025 (Doc C1). He stated that he is seeking relief in relation to the long service increments (LSI) as provided for in the Collective Agreement for the period 2021– 2025. He stated that the LSI will have an impact on his retirement benefit.

In cross-examination, the Disputant stated that he has 20 years of experience in the same post of Senior Technical Officer. He conceded that he was appointed as Senior Technical Officer on 14 May 2008. However, he stated that even before 2008 he was occupying the post of Senior Technical Officer “as acting”. He stated that he was acting as Senior Technical Officer and that the requirement for the LSI is experience in the post of Senior Technical Officer. He was also questioned in relation to the probationary period as mentioned in his appointment letter. It was also put to him that any decision on the relevant provision governing LSI would have an impact on several employees at the Respondent. It was also put to him that he did not have 20 years’ experience in the same post but he did not agree.

A representative of the Co-Respondent then deponed before the Tribunal and he stated that there are two types of actingship at the Respondent. First, there was what he termed as ‘lateral actingship’ where the employee would retain his original post and at the same time replace another officer in a higher post. He stated that secondly, there was actingship proper, where the employee would leave his actual post and act in a higher post whilst someone else would do his job. He added that the Collective Agreement did not require that the employee had to be in the post in a substantive capacity.

In cross-examination, the representative suggested that the Co-Respondent had insisted that after five years in a post and in the absence of any adverse report, the employee should automatically be put in the post in a substantive capacity. When questioned in relation to the letter of appointment of Disputant as Senior Technical Officer (Mechanical) (Doc A1) and more particularly the initial probationary period of 6 months mentioned therein, and which letter the Disputant had accepted and signed, the representative replied that there was “*un manquement de la part du CEB*”. He added that the ‘contract’ of the Disputant had in any event been amended by the Collective Agreement for the period 2021-2025. He suggested that the Disputant had more than 20 years in the post of Senior Technical Officer. He stated that the Disputant was not doing lateral actingship. He stated that he did not agree with the interpretation adopted by the Respondent in the present case.

The Human Resource Executive of the Respondent then deponed before the Tribunal and he stated that whatever is in the Statement of Reply of the Respondent is correct. He referred to the philosophy behind the LSI, and stated that this applies when an employee remains in the same post for a long period of time and has not benefitted from any incremental salary increase. He stated that the term “scale” was added so that the relevant provision now reads “in the same scale/post” so as to cater for employees who

have a lateral promotion, with no change in salary scale. He maintained that in the case of Disputant there was no lateral transfer and that, on the other hand, the latter benefitted from three increments when he was promoted to the post of Senior Technical Officer. He stated that if the interpretation suggested by the Disputant/Co-Respondent is adopted, this would create havoc in the salary relativity of many officers at the Respondent. He stated that for the LSI, there is still need for an assessment of the work of the employee which must be positive whereas for an actingship, there is no performance appraisal. He stated that the Disputant was not in the same post for more than 20 years and thus was not entitled to the LSI.

In cross-examination, the representative of Respondent stated that the actingship of the Disputant as Senior Technical Officer was on aggregate more than five years. He stated that only experience acquired in a substantive capacity should be taken into account. He explained that because of the Master Salary Scale, all the salary scales at the Respondent overlap with each other. Thus, he suggested that the salary of a Technical Officer after many years of service will 'reconcile' with that of a Senior Technical Officer. He was referred to 'lateral duties' and agreed that this applied, for example, when one continues to perform in one's post of Technical Officer and then at the same time has to perform the additional duties of Senior Technical Officer. He could not say if the Disputant was replaced by someone else as Technical Officer. He conceded that the Disputant was acquiring experience in the post of Senior Technical Officer, all be it in an acting capacity. However, he maintained that this experience cannot be considered for the purposes of terms and conditions of employment to be eligible for benefits which are offered to officers at the Respondent. He suggested that the experience which the Disputant has gathered in an acting capacity does not come within the scope of paragraph 2.10 of the collective agreement 2021-2025. He suggested that the Disputant as Technical Officer was entitled to draw travelling benefits pertaining to Regular Car Users though he stated that the latter was not entitled to all the benefits pertaining to Regular Car Users but only to part thereof. He added that the entitlement was temporary and was not for full benefits of Regular Car Users. He agreed that the Disputant is resting his case on the latest collective agreement and not on the collective agreement for the period 2017 to 2021. He agreed that there was a difference between the wording of the relevant provisions in the collective agreement of 2017-2021 and the one for the period 2021-2025. The Human Resource Executive suggested that experience is not the only requirement.

In re-examination, the Human Resource Executive stated that even after 31 July 2001 the Disputant was acting in the higher position for other periods of time.

The Tribunal has examined all the evidence on record including the submissions of both counsel. The relevant provision of the collective agreement 2021-2025 is paragraph 2.10 which reads as follows:

2.10 *Lack of career prospect/long service increments*

Employees reckoning more than 30 years' service and having 20 years' experience in the same scale/post, shall be allowed, subject to satisfactory performance and conduct, to proceed incrementally in the master salary scale by one increment every year subject to a maximum of three increments, provided they have drawn the top salary of the respective salary scale for a year.

In case the concerned employees are appointed in the next higher salary scale they shall not draw salary beyond the top salary point of the promotional scale.

For employees, who upon reaching their retirement date, have not benefitted or have benefitted partially from the provisions above, the retirement benefits should hypothetically be computed, as if they have proceeded incrementally in the master salary scale over and above the salary reached in their respective scales by three increments.

A retired employee who is entitled from additional pension benefits due to any salary revision, will be required to make additional contributions in that respect to the Fund. The additional contributions to the Fund will be recouped from the additional lump sum payable to the employee at the applicable rate as at the retirement date. The CEB shall also make its share of pension contributions accordingly.

It is apposite to note that the corresponding provision in the collective agreement 2017-2017-2021 was slightly different and read as follows:

1.13 Lack of career prospect/ long service increments (Refer to Arbitration Agreement)

Employees reckoning more than 30 years' service and having 20 years' experience in their present posts, shall be allowed, subject to satisfactory performance and conduct, to proceed incrementally in the master salary scale by one increment every year subject to a maximum of three increments, provided they have drawn the top salary of the respective salary scale for a year.

For employees, who upon reaching their retirement date, have not benefitted or have benefitted partially from the provisions above, the retirement benefits should hypothetically be computed, as if they have proceeded incrementally in the master salary scale over and above the salary reached in their respective scales by three increments.

This provision is being maintained.

Evidence has been adduced on both sides to try to explain why the initial version of the relevant provision was amended to reach the version adopted by the Respondent and Co-Respondent in the collective agreement 2021-2025. The evidence adduced on behalf

of the Disputant to explain the addition of the word “scale” has not impressed the Tribunal at all. There is also nothing before us to substantiate the evidence adduced on behalf of the Co-Respondent that if one stays in a scale during five years’ actingship then one is automatically promoted. In fact, the Disputant went through a selection exercise before he was appointed Senior Technical Officer, as averred by Disputant himself as paragraph 13 of his Amended Case. On the other hand, the version of the Respondent appears to more plausible and would explain why indeed the words “having 20 years’ experience in the same scale/post,..” was used. Indeed, the explanation of the Human Resource Executive about lateral transfer has not been challenged at all before us. He referred to an employee who was occupying the post of Assistant Technician for years and was laterally transferred to the post of Driver. He stated that the latter was not eligible for the LSI even though he did not get any salary increase since both grades of Assistant Technician and Driver were on the same salary scale. The Human Resource Executive stated that the purpose of the amendments brought to the relevant provision was to allow an employee who would be in such a situation to also benefit from the LSI. The Tribunal does bear in mind that there is evidence that the posts of Assistant Technician and Driver were manual grades (and that the said employee was not a member of Co-Respondent) but there is nothing to suggest that the philosophy behind the LSI would be different for different categories of workers at the Respondent. From Docs B1 and C1, it is clear that, for most of the different salary scales (for staff grades), there were many grades which were sharing the same salary scale. The Tribunal has no reason not to believe the evidence of the representative of the Respondent that the amendments brought to the corresponding provision in the collective agreement 2021-2025 were meant to extend the LSI even in cases of lateral transfers.

The Tribunal has not been impressed that the philosophy of the LSI has itself changed with the change in wording of the corresponding provision in the collective agreement 2021-2025. The philosophy behind the payment of the LSI may not have been reproduced completely as it should be at paragraph (2) of the memorandum dated 24 May 2023 emanating from the Human Resources Manager and addressed to the Disputant (Annex 13 to the Disputant’s Amended Case) since there is no mention of the extension made to include “experience in the same scale”. At the same time, “experience in the same scale” was, in any event, not applicable in the case of the Disputant since the grade of Senior Technical Officer bore a higher salary scale compared to that of Technical Officer. The Tribunal has not been impressed that the replacement of the words “in their present posts” (as appear in the collective agreement 2017-2021) by “in the same scale/post” would have been such as to change the “rationale” or the philosophy behind the payment of the LSI. The philosophy is the same and it is so as not to penalise employees (reckoning more than 30 years’ service) with 20 years’ experience in the same scale/post and who have neither been given the opportunity to get any promotion nor any salary increase thereon. The words “in the same post” can only mean in the same

substantive post. Any other interpretation would simply defeat the purpose of having the LSI. Indeed, whilst in the case of a lateral transfer, there is unchallenged evidence that there is no salary increase (since both grades are on the same salary scale), in the case of the appointment of the Disputant as Senior Technical Officer in 2008 (vide Doc A1), there is again unchallenged evidence that the latter benefitted from three increments. In the memorandum dated 24 May 2023 addressed to the Disputant from the Human Resources Manager (Annex 13 to Disputant's Amended Case), it is provided that *“(3) You applied for and were promoted to the post of Senior Technical Officer (Mechanical) on 01.05.2008 upon which you were granted three increments.”* This certainly does not sit comfortably with the grant of LSI in the present case. Any LSI can only be granted for the period following the appointment of the Disputant as Senior Technical Officer (if and when the relevant conditions are met), which post the Disputant duly accepted (as per Doc A1) and where he had to undergo an initial probationary period of six months where his performance and conduct at work were monitored and assessed.

For all the reasons given above, the Tribunal has not been impressed at all that the Disputant has “20 years’ experience in the same scale/post” as used in paragraph 2.10 of the collective agreement 2021-2025 when he was appointed as Senior Technical Officer only on 14 May 2008 (with effect from 1 May 2008). Any other interpretation will go against the philosophy of the LSI and may also perturb the salary relativity at the Respondent. For all the reasons given above, the present dispute is simply set aside.

(SD) Indiren Sivaramen

Acting President

(SD) Greetanand Beelatoo

Member

(SD) Dr Sunita Ballah-Bheeka

Member

(SD) Venusha Autar

Member

21 February 2025