

PERMANENT ARBITRATION TRIBUNAL

AWARD

R/N 733

BEFORE

RASHID HOSSEN	-	Acting President
RAJEN GAYAN	-	Member
S.C CHAN WAN THUEN	-	Member

In the matter of :-

S.K SEELOCHUN

And

MAURITIUS PORTS AUTHORITY

On 23<sup>rd</sup> August 2002 the Minister responsible for Labour and Industrial relations referred the following dispute by virtue of Section 82(1)(f) of the Industrial Relations Act 1973, as amended to the Permanent Arbitration Tribunal for settlement.

The Terms of Reference described the point in dispute as

**“ Whether Mr S K Seelochun should be appointed in Grade V with top salary, or otherwise. ”**

Mr Ramsewak QC represented the interest of the applicant and the respondent was assisted by Mr Pursem.

The Tribunal wishes it to be on record at the very outset that it has been at the request of both parties that delivery of the Award be maintained as they were hoping for a settlement of the dispute.

They eventually invited the Tribunal to rule on the matter.

The Applicant avers in his Statement of Case that he "took up employment with the Mauritius Port Authority as Civil Engineer on 1<sup>st</sup> July 1996. The Authority was then known as the Mauritius Marine Authority.

The conditions of service were then as per the PRB report of 1993.

In September 1996 the then Mauritius Marine Authority set up a Salary Restructuring Committee (SRC) to carry out a review of salary structures and conditions of service. The SRC gave its report in June 1997. The post occupied by the Applicant was renamed Civil Engineer simply. However two new posts were created, namely Project Engineer and Maintenance Engineer.

The post of Port Engineer was higher than that of Civil/Senior Civil Engineer before June 1997. The new posts created by the SRC were placed between the post of Port Engineer and Civil Engineer in the new grading structure. The post of the Applicant took a third ranking accordingly; he faithfully avers that the post of Port Engineer which was the equivalent of Principal Engineer in the Civil Service became the equivalent of Chief Engineer. The two new posts of Project Engineer and Maintenance Engineer qualified as the equivalent of Principal Engineers; that Mr S. Goburdhone who was Civil Engineer, in the same rank as the Applicant was promoted Port Engineer eventually and the Applicant became Project Engineer by July 1999.

The post of Project Engineer carried however additional duties contrary to the post as advertised. In spite of protests by the Applicant, the Respondent did not budge.

Paragraph 3 of the Statement of Case states that in or about September 2000., a Human Resource Development (HRD) plan was conceived. A consultant was appointed to review the organizational/Salary structure of the Respondent. The consultant came up with a report in the year 2001. The posts of Project engineer and Maintenance Engineer were merged into the single post of Assistant Port Engineer. The consultant also suggested the creation of an additional post of Mechanical Engineer ranking with the post of Civil Engineer.

The Applicant was requested to sign an option form to accept the new post of Assistant Port Engineer. This meant evidently that he would have to perform the duties devolving upon the Project Engineer and maintenance Engineer and also accept an added responsibility of supervising the Mechanical Engineer and the Civil Engineer. An additional post of civil engineer was created. As far as salary was concerned, the Applicant was to receive an additional amount on a point to point conversion on the new scale introduced by the HRD. The difference was about Rs 4000.- which the applicant believed was insufficient remuneration in view of the additional workload.

The Applicant chose not to opt for the new terms and conditions and appealed against the proposed grading and salary to the Job Appeal Committee set up by the Respondent. An appeal was also made by Mr Dabee who was appointed the new Mechanical Engineer. Mr Dabee was before then the Equipment and Plant Co-ordinator (Grade 8 in the grading restructure of HRD). Mr Dabee's appeal was allowed and although he remained Mechanical Engineer he began to draw the salary of Grade 6, the equivalent of the higher post of Assistant Ports Engineer. The Applicant's appeal was set aside without assigning any reason; contrary to expectations, the appeal was heard by the consultant mentioned in 3(i) above. Mr Dabee reached Grade 6 while he was still under the supervision of the Applicant. The refusal by the Applicant to sign the option form had for consequence that he fell outside the new grading structure. Had he opted for the new structure he would have been placed in Grade 6.

The new post of Senior Pilot was also advertised simultaneously with that of project Engineer carrying the same grading and salary. However when the Senior pilots appealed against their grading and salary structure, they were granted an increase in salary to Rs 29,600.- as at 1<sup>st</sup> July 2000.

It is respectfully submitted on behalf of the Applicant that the grading and salary structure of the Respondent has been such as to disturb all relativities; the appeal of the Applicant was turned down and instead of being heard by the Respondent it was heard by the consultant".

The Applicant is asking the Tribunal that he should be appointed in grade V with top salary.

In its Statement of Case, the Respondent admits that

- (i) Applicant took up employment at the Authority and the conditions of service were then as per the PRB report of 1993;
- (ii) in September 1996 there was a review of salary structures and conditions of service that led to the re-naming of some posts;
- (iii) the post of Civil Engineer was ranked third in the SRC Structure for the Engineering Department; and
- (iv) in September 2000, a consultant was appointed to review the organizational/salary structure of the Respondent.

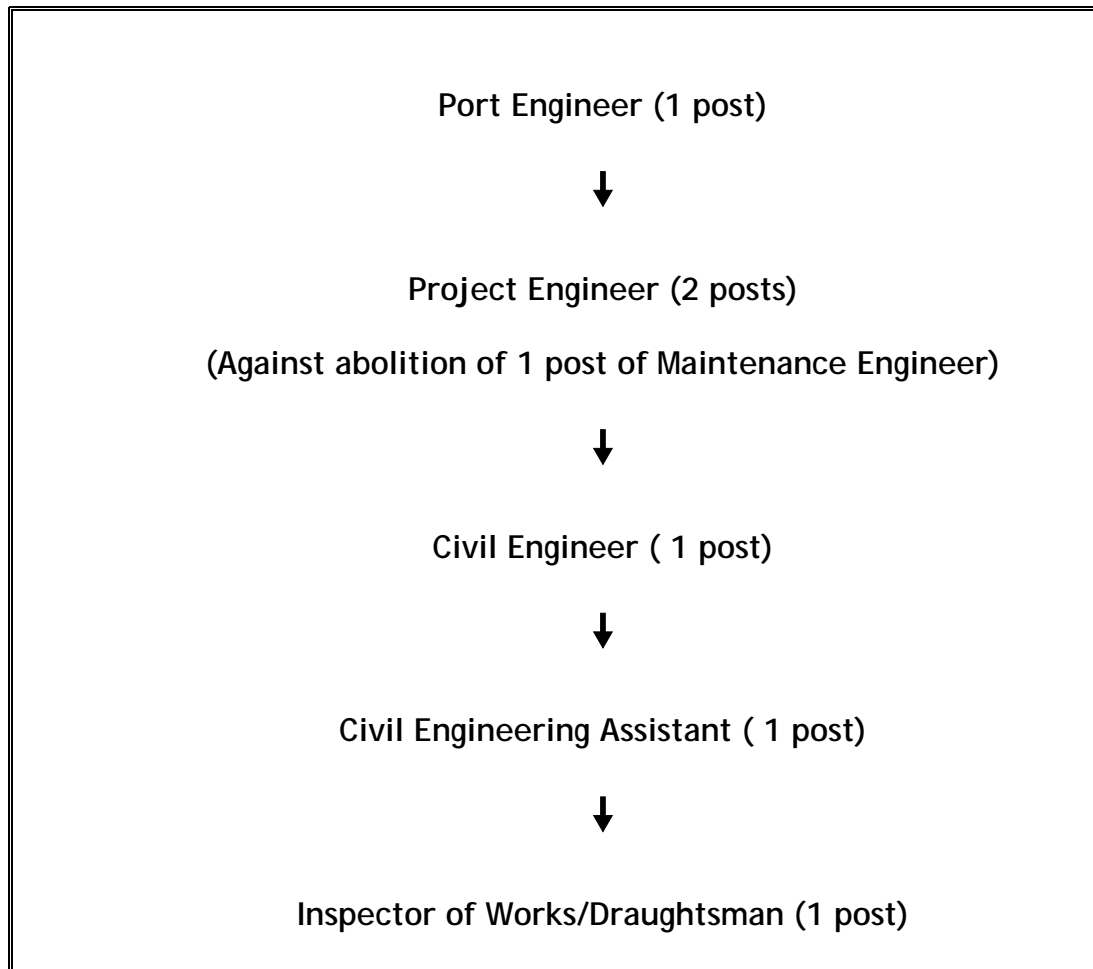
The Respondent, however, avers that " the post of Civil Engineer/Senior civil Engineer was restyled to that of Civil Engineer and the holders were allowed to draw a personal salary in Grade 8 of the SRC Report with a salary scale of Rs 12500 x 500 - 18000 x 750 - 20250. It is worth noting that the SRC recommended that future Civil Engineers be in Grade 9 with a salary scale of Rs 12500 to Rs 19500. The Authority opted out of the PRB Structure and accordingly adopted a new organizational/salary structure as recommended by the SRC Committee.

Both Messrs Goburdhone and Seelochun who were Civil Engineers were promoted Project Engineer on 1 July 1999. Mr Goburdhone being most senior in the grade was eventually promoted Port engineer. As per the SRC Report, the establishment of the Engineering Department provided for one post of Project Engineer and one post of Maintenance engineer with same salary scale.

The responsibility of the Project Engineer was to mainly monitor the implementation of Port Development Projects, ensure that port development is in accordance with the Port Master Plan, update the Port Master Plan, issue development clearance for all projects within the port area, monitor studies in the port etc, whilst the Maintenance Engineer was to monitor the maintenance of the port facilities, carry out in house design, assist in minor development works and monitor development work in Port Mathurin.

In view of the above and in the light of experience gained, Management was of opinion that it would not be advisable to create a strict demarcation between the duties of Project Engineer and those of Maintenance Engineer as it may often happen that at a specific period of time, the work load of project works is much more than that of maintenance works, or vice-versa and hence the two senior Engineers would not be properly utilized.

Thus the existing Engineering structure was modified as follows:-



The modified engineering structure as well as the creation of one additional post of Project Engineer were approved by the Board. The post of Project Engineer was advertised internally (annex 1). Mr Seelochun submitted his application and was eventually offered the post of Project Engineer on 30 June 1999. Mr Seelochun made representations to management. However same were not acceded to and he finally accepted the post as offered.

The Authority avers that the post of Maintenance Engineer was already abolished prior to the Consultant's Report. The Consultant submitted the Final Report in April 2001 and same was approved by the Board on 30 April 2001. In their Report, the Consultants found that the job of Project Engineer was too low compared to that of Port Engineer and as this position was identified as the number 2 in the "Engineering Department" and to justify a higher grade, additional responsibilities were added to the position. Thus the post of Project Engineer was renamed Assistant Port Engineer.

The applicant was required to opt or not to opt for the revised emoluments, job Guidelines and Terms and Conditions of Service after having taken cognizance of MPA Circular No. 5, 7, and 8.

The applicant chose not to opt for the revised terms and conditions of service. Had he opted for the revised pay and grading structures, he would have had to perform the duties devolving upon the post of Assistant Port engineer. As Assistant Port Engineer, the applicant would have drawn a monthly salary of Rs 24,600 when compared to Rs 20,455 (SRC Report) on a point to point conversion (with an increase which was around 15%). The applicant did not exercise his option by the closing date of 11 June 2001.

Mr A. Dabee held the post of Plant and Equipment Coordinator on a personal basis and that post was at par with that of Workshop Manager (SRC Report). Mr Dabee has never been appointed as Mechanical Engineer. He (Mr Dabee) appealed as the Consultants had in their Report recommended the re-assignment of the Plant & Equipment Coordinator (at par with Workshop Manager as per SRC Report) to Mechanical Engineer with a lower salary scale and grading.

Mr Dabee's appeal was allowed as the Appeals Committee considered that Mr Dabee should maintain his post on a personal basis equivalent to that of the Workshop Manager.

The Applicant submitted his appeal for a grading review and the Appeals Committee re-evaluated the position of Assistant Port Engineer and found out that the original evaluation in Grade 6 (HRD Report) could not be reviewed.

It is submitted that Mr Dabee's grading is on a personal basis and is not applicable to the post proper.

As per the SRC Report, the posts of Senior Pilot and Project Engineer were at par within the same grading and salary structure.



It is to be noted that the Senior Pilots have never appealed against their grading and salary structure. Owing to the acute shortage of experienced and qualified Pilots, on the local labour market, the Consultants recommended that the salaries for these positions be established on a case to case basis within the proposed scales taking into account seniority, experience performance etc.

A minimum of Rs 24,600 could be the salary for Pilots and the Rs 29,600 for Senior Pilots

It is submitted that the reference to the case of the Senior Pilot is irrelevant and has no bearing to the claim made by the Applicant.

Management maintains that the new organizational/salary structure as recommended by the HRD Consultants and approved by the Board has not caused prejudice to any employee. The Consultants have been acting in a professional manner in determining the various grading of positions in the Authority and have not disturbed any relativities as claimed by the Applicant.

Applicant was given and had the opportunity to make his appeal as other employees. His appeal has not been retained.

Respondent further avers that the rule governing option form is that the applicant should have opted for the new organizational/salary structure prior to raising his claims with the Authority or other legal instances. By not signing the option form, the applicant has himself chosen not to be in the salary structure. No punitive action has been taken by the Authority. His choice of being out of the new system and believing that this is causing himself prejudice is irrelevant.

Management cannot on its own decide to place the applicant in Grade V as this would tantamount to questioning the whole HRD exercise.

Applicant deposed under oath before the Tribunal to the effect that following revised terms and conditions of service within the organization he has been working, he opted not to join the team that would benefit from the new terms and conditions; he is accordingly left in the original position with additional responsibilities and duties. He in fact confirmed substantially the contents of his statement of case and explained that the post of Project Engineer and that of Maintenance Engineer are two new posts which have been created and they were intermediary between the posts of Civil and Port Engineer. His post of Civil/Senior Engineer was renamed Civil Engineer and he was at a later date promoted to the post of Project Engineer. This post was advertised in 1999 and himself and one Goburdhone was nominated.

The applicant further stated that with his letter of appointment as Project Engineer, his duties increased as he had to take on the duties of the Maintenance Engineer as well. The duties belonging to the post of Maintenance Engineer were saddled on to the holder of the post of Project Engineer, and this without compensation. Neither was the post of Maintenance Engineer filled nor was the post of Project Engineer left vacant by Mr Goburdhone. There was a post of Assistant Port Engineer which was created in 2001 under the HRD's report. The latter mentioned that the posts of Project engineer is being renamed Assistant Port Engineer but on the understanding that there would not be a second post of Project Engineer. He was offered that post which was to monitor and supervise additional staff and he opted not to take it because of the additional duties without a salary compensation. He appealed to Management and his appeal was turned down. He added that the Appeal Board Director General was never present and he in fact appealed to the same Consultant who had come up with the report.

Applicant deponed as to the different increases of salary as per the HRD report. The post of Civil Engineer for example was Rs 12,500 under the SRC 1997. It was increased under the HRD to Rs 16,000.-.; the post of Project Engineer and the Maintenance Engineer carried an initial salary of Rs 18,000.-. It was increased following the HRD to Rs 22,600 as initial salary and to Rs 31,600 as top salary. The witness stressed that under the SRC, there were two distinct posts, one of Project Engineer and one of Maintenance Engineer

whereas under the HRD, there has been a merger of these posts, in particular, resulting in the abolishing of the second post. The post of Project Engineer was renamed Assistant Ports Engineer. The post of Port Engineer was on a flat salary of Rs 26,000 under the SRC 1997 and changed to Rs 39,100 under the HRD.

Applicant further states that he is for the time drawing a salary in the scale of Rs 18,000 - Rs 23,000 as it was prior to the SRC of 1997 as he did not sign the option form.

The Respondent's representative confirmed as to the correctness of the facts and stated in Respondent's Statement of Case. He denied that the Applicant has been ignored by Management for failing to opt for the HRD. He added that Applicant is the Project Manager and is still the No 2 of the Engineering Department. The Engineering Division is headed by Mr Goburdhone and just under him is Applicant, the Project Engineer. In fact, with the HRD Report, there is first the Port Engineer at the head of the Engineering Department, then the post of Assistant Port Engineer who is supposed to be the No 2 and of the then the Civil Engineer. Since Applicant has not opted for the HRD Report, his post is still that of Project Engineer. Had he done so, he would have been called Assistant Port Engineer. No one has been called upon to fill that post. The witness further stated that Mr Goburdhone is the most senior in the hierarchy, i.e to the Port Engineer. He would not comment on whether,

following the HRD report, the workload of the Engineer has increased. According to the witness, the Authority has been reluctant to accede to Applicant's request as it would disturb all relativities in the Plan.

The representative of the Respondent has been quite evasive on the issue of extra duties imposed on the applicant and if one has to apply the test of balance of probabilities, one cannot escape that indeed Applicant has had an increase of his workload. A compensation for extra duties is therefore certainly called for.

It seems to us that the HRD report has brought changes in the operational needs of the Authority. The failure to accept the Report may be interpreted as a unilateral change to an employee's conditions of service which in itself may constitute an unfair practice relating to some sort of demotion.

Had Applicant opted for the HRD report, he would have been the No 2 as stated by the representative of the Mauritius Port Authority and the post he would have held would have been Assistant Port Engineer instead of Project Engineer.

We find it disturbing that when Management agreed with the Union to appoint an arbitrator to sort out all disputes, they did not include the case of the applicant.

Counsel for the Respondent has been wondering whether, at the end of the day, an industrial dispute exists between the Employer and the Employee. According to him, there have been recommendations made and implemented except in the case of Applicant whereby his initial contract of employment is not affected. The latter has not opted that the recommendations be made part of his contract.

Section 2 of the Industrial Relations Act 1973 as amended defines an industrial dispute to be “a dispute between an employee or a trade union of employees and an employer or a trade union of employers which relates wholly or mainly to

A contract of employment or a procedure agreement; except, notwithstanding any other enactment, those provisions of the contract or agreement which -

- (i) concern remuneration or allowance of any kind; and
  - (ii) Apply to the employee as a result of the exercise by him of an option to be governed by the corresponding recommendations made in a report of the Pay Research Bureau.
- (a) by inserting in its appropriate alphabetical place the following definition -

“Pay Research Bureau” means the bureau referred to in the yearly recurrent budget under the Vote of Expenditure pertaining to the Prime Minister’s Office.”

- (a) the engagement or non-engagement, or termination or suspension of employment, of an employee; or
- (b) The allocation of work between employees or groups of employees.”

This is a case where an applicant feels aggrieved for having exercised a choice imposed upon him by Management and whereby additional work, as he puts it, came on his way and he sees an upgrading to the next higher scale as a solution. We find this to fit perfectly within the definition of industrial dispute since it stems from his initial contract.

We may understand that moving up a step on the ladder may disturb all relativities with the HRD Plan; but we expect Management to also appreciate that applicant cannot be left to swim alone. On the contrary he needs to be rescued.

Perhaps we need to remind both parties of the first 3 paragraphs found in the Code of Practice (Third Schedule (Section 52) Part 1 of the Industrial Relations Act 1973 as amended:

### THIRD SCHEDULE

(section 52)

CODE OF PRACTICE

PART I - INTRODUCTION

1. The Code is founded on the following 4 main propositions -
  - (a) the employer and his employees have a common interest in the success of the undertaking;
  - (b) good industrial relations are the joint responsibility of management and employees and the trade unions representing them;
  - (c) collective bargaining, carried out in a reasonable and constructive manner between employees and strong representative trade unions is the best method of conducting industrial relations;
  - (d) good human relations between employers and employees are essential to good industrial relations.
  
2. The standards set by this Code are not intended to be exhaustive, or to prevent the introduction or recommendation by any person or authority concerned, of any additions or improvements.



**PART II - RESPONSIBILITIES**

**MANAGEMENT**

3. While good industrial relations are a joint responsibility, the primary responsibility for their promotion rests with management.

Had Applicant signed the Option form he would in the normal course of things, have been appointed as Assistant Port Engineer.

As Assistant Port Engineer is second in command of the Engineering division, he has to supervise the work of Engineers and junior staff in the engineering division. In view of the increase in his workload and the additional responsibilities, the Tribunal awards that he should be remunerated in a grade higher than that of the newly created post of Mechanical Engineer.

This Award shall take effect on the date of its publication in the Gazette.

**R. Hossen**

**Acting President**

**R. Gayan**

**Member**

**S. C. Chan Wan Thuen**

**Member**

**21 July 2004**