

**THE PERMANENT ARBITRATION TRIBUNAL**

**AWARD**

**RN 742**

**Rashid Hossen -Vice-President**

**B.Ramburn - Member**

**H.Girdharee - Member**

**In the matter of :-**

**Mauritius Examinations Syndicate Staff Union**

**And**

**The Mauritius Examinations Syndicate**

The following industrial disputes were referred to the Tribunal for settlement by the Minister responsible for Labour and Industrial Relations under section 82(1)(f) of the Industrial Relations Act 1973, as amended:

- (1) Case of Security Officer- " Whether according to the Heeralall Report of 2000, appointment to the grade of Security Officer at the MES is a class to class or grade to grade appointment and whether Security Officers , Messrs L.Seechurn, J.Dookhit and S.Kistnasamy are entitled to the payment of arrears of salary from 1993 to 1998."
- (2) Case of Confidential Secretary - " Whether the basic salary of Mrs P Naiken and Mrs H Chouty (appointed as Confidential Secretary in 1990) should be adjusted to be at par with the basic salary of Mrs Karyan (appointed as Confidential Secretary in 1995). And whether

payment of arrears is to be effected as from the date the anomaly was created.”

(3) Payment of marking allowance - “Whether MES Staff working in MES marking centres situated at the MES Head Office at Reduit where marking exercises are carried out are entitled to an allowance or otherwise.”

(4) Discrepancies in basic salary

(i) “Whether the basic salary of Mrs D Dusoruth, appointed as Examination Assistant in 1998 should be increased to be at par with the basic salary of Messrs E S Appadoo and R Ancharaz who were appointed Examinations Assistants in 2001.”

(ii) “Whether the basic salary of Messrs K Chummun, A Nundloll, K Vencatasamy and Mrs S Dhunnoo should be adjusted to be at par with Mrs A Choolun.”

#### Dispute No.1:

Case of Security Officer- “ Whether according to the Heeralall Report of 2000, appointment to the grade of Security Officer at the MES is a class to class or grade to grade appointment and whether Security Officers , Messers L.Seechurn, J.Dookhit and S.Kistnasamy are entitled to the payment of arrears of salary from 1993 to 1998.”

The applicant avers in its Statement of Case that the Scheme of Service for Security Officers at the Mauritius Examinations Syndicate before 1995 was

(i) By selection of officers of the Syndicate holding a post requiring as a minimum a Cambridge School Certificate or equivalent;

- (ii) 8 years experience in Security matters and/or in handling examination materials.

The Scheme of Service from 1995 to 1997 was

- (i) By selection of officers of the Syndicate holding a post requiring as a minimum a Cambridge School Certificate or acceptable alternative qualifications;
- (ii) 8 years experience in Security matters and/or in handling examination materials.

The Scheme of Service from 1997 onwards has been

- (i) By selection of officers by the Syndicate holding a post requiring as a minimum a Cambridge School Certificate or an acceptable alternative qualifications e.g. 3 passes at SC level preferably including English, French together with LCC Office Practice (Level I);
- (ii) 8 years experience in Security matters and/or in handling examination materials.

The applicant further avers that in 1988 2 CA/CSA (Mr Pentayya and Mr Nina) who possessed past working experience at the examination section of the Ministry of Education were promoted to Security Officers. The PRB Report of 1993 abolished the post of CA/CSA. In 1995 2 Examination Clerks (Mr Seechurn and Mr Dookhit) were appointed Security Officers. In March 1997 1 Examination Clerk (Mr Kistnasamy) was appointed Security Officer. The applicant contends that in 1997 the Scheme of Service of Security Officers was amended without prior consultation with the Union and/or the Security Officer in post and in July 1997 1 driver (Mr Bheeroo) was appointed as Security Officer.

It is further averred that the Scheme of Service of Drivers to be as follows:-

### **Qualifications**

- 1 CPE or acceptable qualifications with a working knowledge of English and French
- 2 A valid driving licence.
- 3 A minimum of three years experience in the public service or in an approved service.

### **Duties**

1. To drive motor vehicles proficiently.
2. To carry out simple maintenance tasks.
3. To perform certain messengerial duties on and off such as running errands, despatch work etc.
4. To perform other cognate duties.

It is part of the applicant's Statement of Case.

The Ad-Hoc Committee which was set up by Government in August 1999 to look into representations from Trade Unions and individuals regarding "alleged anomalies" arising out of the 1998 Reports of the PRB on the Review of Pay and Grading Structures and Conditions of Service submitted its Report in November 2000, and one major recommendation relates to the adjustment of salaries for grade to grade and class to class promotion where appointment is made from officers in a single grade.

MES Management refused to pay arrears of salaries to Security Officers informing of a ruling from the Ministry of Education which reads as follows "As regards class to class promotion where appointment to the higher level is made from officers in various grades, the present provisions for salary on promotion should apply, that is the officer should join the initial or the flat salary of the higher scale or in case of an officer promoted to a higher scale which overlaps his original scale, he would be allowed to enter the higher scale at the next higher point to point on his original scale."

The applicant maintains that promotion to the grade of Security Officers is made from a single grade, that is, from Examinations Clerks and that no other grade at the Mauritius Examinations Syndicate satisfies the full requirements to be promoted to Security Officers, including Drivers. Applicant therefore avers that Security Officers are entitled to the arrears of salary as recommended by the Heeralall Report.

In its Statement of Case, the respondent avers that the first two officers to be appointed Security Officers in 1986 and in 1988 respectively held at least a minimum of a school certificate or equivalent. While those appointed in 1995 and 1997 do not hold a School Certificate. Prior to joining the MES in 1985 they were Clerical Assistants. The post of Clerical Assistant was normally filled by holders of SC. But the three Security Officers namely Messrs Seechurn, Dookhit and Kistnasamy may not have possessed the required qualifications for appointment to the grade of Clerical Assistant. One of them has passed in only two subjects at SC level, the other has passed in one subject at SC level and third in no subject. The fact that they actually held a post, i.e. of Clerical Assistant, which was normally being held by holders of an SC, entitled them to promotion as Examination Clerks.

The respondent further avers that Messrs L Seechurn, J Dookhit and S Kishnasamy were appointed Examination Clerks, the first two in 1991 and the latter in 1995. This appointment had become necessary upon the phasing out of the post of Clerical Assistant in the Public Service. They were required to pass an examination in Office Practice so that they might be appointed Examination Clerk. Messrs L Seechurn, J Dookhit passed this examination but Mr S Kishnasamy could not make it. Besides, their appointment to the grade of Examination Clerks 'isolated' them as they did not hold qualifications which would entitle them to future promotion as Examinations Assistant. Thus, not to create frustration among qualified clerks, the three officers were appointed Security Officers, a grade more in line with their limited qualifications.

It is the respondent's contention that the Union had not even been set up in 1997 and since there was a vacancy, Management advertised the post openly. None of the Security Officers objected. Respondent avers that the qualifications/Scheme of Service of the driver are immaterial to the case as a driver can always possess a better qualification as in the present case. It denies having lowered the qualifications arbitrarily and therefore avers that the post of Security Officer is a single grade post and not hierarchically organised by the post of Clerk, Executive Officer and Higher Executive Officer. Various officers from different grade applied and were entitled to appointment as Security Officer as according to respondent this is a clear-cut case of a class-to-class promotion, not marked by 3 increments.

Mr Bhugwan, representing the Union deposed before the Tribunal and maintained the averments contained in his Statement of Case. He explained that his complaint with respect to this dispute is that a driver has been allowed to be nominated Security Officer following a Scheme of Service set up and tailor-made for him and

thus affecting the legitimate expectations of those already in it. If only Clerks would become Security Officers, it would, according to the witness be a class-to-class promotion within a grade but when Drivers are involved, there can be no single grade.

The representative of the respondent, Mr Koonjoobeeharry also deponed and maintained the contents of the respondent's Statement of Case. He explained before the Tribunal that Schemes of Service have changed every now and then before appointments have been effected although no major changes have been brought into them. In 1995 the Scheme was " by selection of officers of the MES, holding a post requiring as a minimum, a Cambridge School Certificate or acceptable alternative qualifications". In 1997, an example was added to it e.g. 3 passes at School Certificate Level, preferably including English and French. In other words, the Scheme was made more explicit. He also added that although the Union was registered in 1996, it was only as from 1998 that they started some sort of negotiation with management. Also whenever a vacancy arises, this is circulated among staff and no one has ever objected. As regards the 3 increments to be paid, he maintains that this is a class-to-class promotion, not marked by the 3 increments, in line with PRB Report.

The Tribunal finds that the Union has been registered under the Industrial Relations Act 1973 in July 1996 and this is evidenced by annex "A" produced. The disputes in lite are referred to us by the Minister in the name of the Union i.e Mauritius Examinations Syndicate Staff Union. It is apposite *en passant* to note what was said in *Sullivan V Union of 'Artisans of the Sugar Industry Trade-Unions* SCJ 1978 Rec. no 1/78, with respect to the legal status of a Trade Union which has not yet been registered:

"Our law regulating the existence and registration of Trade Unions is to be found in "The Industrial Relations Act 1973" which came into

force on the 7<sup>th</sup> February, 1974. Its pattern has been borrowed from foreign legislation inspired from the principles of English law on the subject.

Section 16(1) of the Industrial Relations Act 1973 reads as follows: - Subject to the other provisions of this Act, a registered trade union shall be a body corporate having perpetual succession and a common seal and shall have all the rights and powers of a natural person.

This is the enactment by which the trade union acquires legal personality.

Section 2 defines a "*trade union*" as : "an association of persons, *whether registered or not*, having as one of its objects the regulation of industrial relations between employees and employers and includes a federation".

It is provided for in section 5 subsection (1) that subject to section 110 of the Act, "every trade union shall, not later than three months after the date of its formation apply to the Registrar for registration". Subsection (2) enacts that: "if a trade union fails to comply with subsection (1) the trade union shall commit an offence and the trade union shall be wound up by the Registrar in the prescribed manner".

By Section 105(1) " Any trade union which fails to comply with any provisions of this Act or of the second schedule or of any regulation made under this Act shall commit an offence and shall, on conviction, be liable to a fine not exceeding five thousand rupees"



One would be inclined to interpret the above enactments as meaning that even before its registration the union in question has an existence and as such could sue or be sued. However in Citrine's treatise on Trade Union Law at page 177 it is said in no ambiguous terms that: "In the absence of some special statutory provision the unincorporated group is not a legal person and cannot as such contract, commit or be injured by torts, sue or be sued, or hold property. It may operate as a factual entity but the law regards the use of its name as merely a "convenient means of referring in conversation to the persons composing the society". In the absence of a procedural rule permitting the imposition of collective liability or the enforcement of collective rights the law attaches liability incurred in the association's name to those individual members who actually authorise or acquiesce in the making of the contract or the commission of the tort. Only they can sue and be sued: rights and liabilities are essentially personal to them."

Note 51 at the bottom of the same page reads as follows: "It has always been assumed that unregistered unions are not legal entities and cannot sue or be sued as such. It is arguable that for certain purposes the legislature has regarded them as possessing a "*locus standi*" in legal proceedings e.g. Section 16(4) of the Industrial Assurance and Friendly Societies Act 1948 and the corresponding act in Northern Ireland impose a penalty upon "any trade union" contravening its provisions - they apply both to registered and unregistered unions. See also Section 8 of the Trade Disputes and Trade Unions Act (N. 1) 1927. It is submitted that these provisions cannot be construed as giving a general power to sue and be sued. Life Assurance and political objects are optional and must not be a union's principal objects."

According to *Traité de Droit du Travail* by J. M. Verdier under the Direction of C. H. Camerlynck at page 182 and following it would

appear that in France as well, a trade union unregistered or improperly registered although enjoying certain privileges has no power to take judicial action unless such power has been acquired after certain formalities have been fulfilled.

I have further considered the implication of the French Civil Code which is the basis of our civil law and which must be applied in the absence of some specific statutory enactment. It would appear that a trade union which has been in operation for some time before it is declared to have been improperly constituted or improperly registered could be assimilated to what is known in French law as a "*Société de fait*" this would not however give the unregistered trade union a legal entity but would help towards winding up the assets and liabilities of such a union which has been functioning but whose existence is ultimately declared to have been null and void. (Our law however provides how the Trade Union should be wound up by the Registrar)."

However, we need to point out at this stage that the fact of recognition is immaterial to the present case. The Union does not have to be recognised to declare an industrial dispute. Indeed nothing precluded the applicants to bring the disputes in their own personal name, i.e as employee. The Industrial Relations Act 1973 as amended defines an "Industrial dispute" as "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) "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.
- (b) the engagement or non-engagement, or termination or suspension of employment, of an employee; or
- (c) the allocation of work between employees or groups of employees;"

Recognition is in relation to bargaining power, and to use the precise words of the Industrial Relations Act 1973 as amended, Section 56: it is "the consideration of any question relating to the claim of a trade union of employees or a joint negotiating panel for negotiating rights may be made to the Commission by the trade union or panel, or by the employer directly affected by the claim, or jointly by the trade union or the panel and the employer."

We note that no evidence has been forthcoming in support of any objection from the Union when the 1997 Scheme of Service was amended.

On the contrary, it is not denied that since there was a vacancy, Management advertised the post and none of the Security Officers objected.

We endorse the view of the Respondent that there exists no grade below the grade of Security Officer and that the grade of Security Officer is a single graded post.

We note the stand of the Respondent that it has never refused to pay arrears. What it has always looked for is an authority which would enable it to pay the arrears. According to Respondent, there exists no such authority and Respondent stands guided by what is obtainable from the PRB Report 1998, the relevant paragraphs of which provide:-

- 12.7.5 “We recommend that grade to grade promotion in general be marked by three increments.
- 12.7.6 We further recommend that class to class promotion, where appointment to the higher level is made from officers in a single grade below, be marked by three increments.
- 12.7.6 As regards class to class promotion where appointment to the higher level is made from officers in various grades, the present provisions for salary on promotion should apply, i.e the officer should join the initial or the flat salary of the higher scale which overlaps his original scale, he would be allowed to enter the higher scale at the next higher point to point he was on his original scale.”

But we must not overlook the fact that another PRB Report came out in June 2003 although the parties did not address to its contents.

We find it useful to refer to the following:-

- 15.7.1 “At present, grade-to-grade promotion in general is marked by three increments. Class-to-class promotion, where appointment to the higher level is made from among officers in a single grade below, is equally marked by three increments. However, as regards class-to-class promotion where appointment to the higher level is made from officers in various grades, the officer joins the initial or the flat salary of the higher scale, or, in the case of an officer promoted to a higher scale which overlaps his original scale, he is allowed to enter the higher scale at the next higher point to point he was on his original scale.
- 15.7.1.1 With the implementation of the above provisions, which came into force on 1 July 1998, the salaries of officers promoted/appointed

prior to 1 July 1998 in a grade-to-grade situation or in a class-to-class situation where the appointment was made from officers in a single grade and having benefited from only one increment on promotion and drawing salaries less than their colleagues promoted on or after that date were adjusted so that they draw the same salaries as their colleagues promoted/appointed on or after 1 July 1998.

15.7.3 According to the Personnel Management Manual (PMM), the terms 'promotion', 'class-to-class promotion' and 'grade-to-grade promotion' are defined as follows:

- (i) 'promotion' means 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 he as last substantively appointed or promoted.
- (ii) 'class-to-class promotion' means promotion to a rank which entails greater responsibilities of a different nature to those previously undertaken and performed.
- (iii) 'grade-to-grade promotion' means promotion to a higher grade in the same hierarchy which entails greater responsibilities of the same nature to those previously undertaken and performed.

15.7.8 We recommend that, in general, all promotion should be marked by an increase in salary representing at least three increments subject to the provisions of paragraph 15.7.9 below. An officer on promotion, should join the initial or flat salary of the higher scale or be granted three increments worth at the incremental point reached in the lower post (to be read from the master scale) 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 post.

15.7.9 However, the above recommendation should not apply in the following cases:

- (i) Where an officer has benefited from three increments as a result of a grade-to-grade promotion and is subsequently promoted in a class-to-class grade within a period of two years and supersedes salarywise a former colleague from the source grade who has been promoted to the new class before him, the officer should be granted only one increment on promotion.
- (ii) 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 a same exercise, the serving officer should be granted one increment on promotion.
- (iii) Where a serving officer applies for a grade in the service requiring qualifications of a completely different line than those of his grade, such as a Clerical Officer applying for the grade of Engineer, the officer should, on appointment, join the grade at the initial of the scale or retain the salary of his previous grade, whichever is the higher.

15.7.9 We further recommend that the salary of officers coming from various grades and promoted/appointed in a class-to-class situation, other than those mentioned at paragraph 15.7.9, prior to the date of implementation of the recommendation at paragraph 15.7.8, and who have benefited from only one increment, be adjusted hypothetically

up to the date preceding the one on which the recommendation is implemented. The hypothetical salary then arrived at should be converted in the normal manner in the master conversion table on the date the recommendation at paragraph 15.7.8 is implemented. However, the adjusted salary should not exceed the last point in the salary scale of the promotional grade.”

However, the terms of reference sent by the Minister speaks clearly of the Heeralall 2000 and the Tribunal would act ultra vires to award on the PRB 2003 Report. The applicant is at liberty to refer to the Report.

With respect to the Heeralall Report, we find that the Respondent has adopted the correct approach in that it is a case of class-to-class promotion, not marked by three increments.

The dispute is therefore set aside.

## **DISPUTE NO 2**

### **Case of Confidential Secretary**

“whether the basic salary of Mrs. P. Naiken and Mrs. H. Chouthy (appointed as Confidential Secretary in 1990) should be adjusted to be at par with the basic salary of Mrs Karyan (appointed as Confidential Secretary in 1995). And whether payment of arrears is to be effected as from the date the anomaly was created.

In their statement of case, the applicant elaborates the history of the various stages of appointments and promotions of the parties involved and they are as follows:-

Date	Mrs Naiken & Mrs Chouthy	Mrs Karyan
Jan. 85 August 85	Joined MES as Temporary Typist/Stenographer	Joined MES as Clerical Assistant
July 86	Promoted to Clerk/Typist	Promoted to Data Processing Clerk
July 86	-	Promoted to Examinations Clerk
October 90	promoted to Confidential Secretary with salary Rs 3,600	Salary drawn as Exams Clerk
July 91	Salary drawn Rs 3,700 as Confidential Secretary	Salary drawn Rs 3,500
July 92	Salary drawn Rs 3,800	Salary drawn Rs 3,600
July 93	Salary drawn Rs 5,450	Salary drawn Rs 5,150
July 94	Salary drawn Rs 5,600	Request for change of grade from Exams Clerk to Clerk/Typist. Salary increased from Rs 5,150 to Rs 5,450, i.e Rs 300 additional which represents 2 increments. (one annual increment + one additional increment because of change of grade)
Jan 95	Salary drawn Rs 5,600	Promoted to Confidential Secretary with salary Rs 5,800
July 95	Salary drawn Rs 5,800	Salary drawn Rs 6,000 as



		Confidential Secretary
July 96	Salary drawn Rs 6,000	Salary drawn Rs 6,200
July 97	Salary drawn Rs 6,200	Salary drawn Rs 6, 400
July 98	Salary drawn Rs 8,970 following the PRB Report on Salary Revision	Salary drawn Rs 9,270 following the PRB Report on Salary Revision
Feb 99	Request was made to management for adjustment of salary	
July 99	Salary adjusted Salary drawn Rs 9,570	Salary drawn Rs 9,570
July 2000	Salary drawn Rs 9,870	Salary drawn Rs 9,870
July 2001	Salary drawn Rs 10,170	Heeralall Report on PRB anomalies. One additional increment given to Mrs Karyan. Salary drawn Rs 10,470
July 2002	Salary drawn Rs 10,470	Salary drawn Rs 10,770

The applicant avers that Mrs Karyan was granted one additional increment in July because of the fact that she made a request for change of grade from Examinations Clerk to Clerk/Typist. In fact the two grades carried the same salary scale. Usually a request for change of grade is not compensated by additional increments.

The fact that Mrs Karyan benefitted from one additional increment in 1994, this has resulted as an anomaly in January 1995 when she was promoted to Confidential Secretary. Without the additional increment in 1994, Mrs Karyan would have drawn basic salary Rs 5,600 in January 1995

when she was promoted to Confidential Secretary instead of Rs 5,800. At that time Mrs Naiken and Mrs Chouthy were drawing basic salary of Rs 5,600.

In 1999, the union discussed this anomaly with management. In 2000, management agreed to adjust the basic salary of Mrs Naiken and Mrs Chouthy with back date effect as from 1998. The salary of Mrs Naiken/Mrs Chouthy and Mrs Karyan were aligned.

The Heeralall Report on PRB anomalies recommended that "Confidential Secretaries" who were promoted during period 1993 to 1998 should benefit from one additional increment. Mrs Karyan received one additional increment.

In July 2001, Mrs Karyan started again to draw salary higher than Mrs Naiken and Mrs Chouthy.

Another attempt was made to adjust the salary of Mrs Naiken/Mrs Chouthy so as to be aligned with Mrs Karyan. Management refused to accede to the request.

The applicant therefore proposes that the same principle which management applied in July 1999 (adjustment of the salary of Mrs Naiken/Mrs Chouthy to be at par with Mrs Karyan) be applied a second time so that the basic salary of Mrs Naiken/Mrs Chouthy be aligned to that of Mrs Karyan and that they draw the same basic salary.

The Respondent avers in its statement of case that had Mrs Karyan not obtained the additional increment in 1994, she would have earned Rs 9,870 in July 2001.

Mrs Karyan was promoted Confidential Secretary 1n 1995. It was at a time when the PRB had temporarily waived pay of "three increments on promotion". But in 2000, with the publication of the Ad Hoc Committee set up to look into "alleged anomalies" arising out of the PRB report 1998 and

the PRB (Errors, omissions and clarifications) report 1999, the three "increments on promotion" were reinstated.

Para 9.23 of the Ad Hoc Committee report recommends the following:

"The Committee accordingly recommends that the rules in para 12.7.5 and 12.7.6 of the PRB report should apply hypothetically to an officer promoted during the period 01 July 1993 to 30 June 1998. That officer should then progress hypothetically up to 30 June in the salary scale of the post to which he was promoted. The hypothetical salary so arrived at should then be used for conversion in the normal manner on 01 July 1998 as set out at para 1.15(i) of the PRB report."

All the members of staff who had been promoted during period 01 July 1993 and 30 June 1998 were made to move hypothetically in the salary scale of the post. The hypothetical salary so arrived at constituted their salaries. Hence Mrs Karyan who was offered two increments on promotion found her salary adjusted by one increment, duly supported by the recommendations of a salary commission.

Mrs V. Karyan reckoned past services at the MIE as Clerical Assistant from 17 August 1977 to December 1984. She joined the MES on permanent transfer in January 1985 and possessed nearly seven years' experience as Clerical Assistant on joining the MES. She, therefore, automatically carried her former salary to the MES.

Both Mrs Chouthy and Mrs Naiken joined the MES on 05.08.85 and since they had no previous working experience they started with the initial salary of the grade.

Compared to the two, Mrs Karyan reckoned 7½ years service in an approved service. Just before being promoted to the grade of Confidential Secretary on 30.09.90, Mrs Chouthy and Mrs Naiken were both drawing Rs

3,100 per month, compared to the Rs 3,400 per month for Mrs Karyan i.e. three increments short of Mrs Karyan's salary.

It is clear from the evidence adduced by Mr Koonjoobeehary that the whole problem starts with the granting of one additional increment to Mrs Karyan. He recognizes that this problem found its solution after sometimes and eventually the Heeralall report was put into application. He does admit that when the 3 increments were put together, Mrs Karyan started again to earn more than Mrs Chouthy and Mrs Naiken. Note that the applicant is not challenging the report of the Heeralall report and the respondent is only applying the contents of the report. In short, Management felt that they should effect a re-adjustment in the past, i.e prior to the report but once the report came out, it is an authority they had to be subjected to. In that context, the Tribunal cannot blame the stand taken by Management.

We do not agree that there should be no re-adjustment of the salaries of the Confidential Secretaries because it is not based on any supporting authority. There is evidence that in the past Management did effect a re-adjustment and on the principles of fairness and equal pay for equal work, the Tribunal is of the view that the basic salary of Mrs P. Naiken and Mrs H. Chouthy should be adjusted to be at par with the basic salary of Mrs Karyan and payment of arrears is to be effected as from the date the anomaly cropped up. We have not been convinced by the argument that longer years in service and experience of Mrs Karyan should override the principle of equal pay for equal work.

The Tribunal awards accordingly.

### Dispute No 3

#### Payment of Marking Allowance

**“Whether MES Staff working in Marking Centres situated at the MES Head Office at Redit are entitled to an allowance or otherwise.”**

The Applicant avers that there was a trade dispute in 1999 on “whether the MES Staff working in the MES marking centres where marking exercise are being carried out are entitled to an allowance or otherwise”.

On 5 June 2000 the Ministry of Labour referred the case to the Industrial Relations Commission.

After hearing both parties, the Industrial Relations Commission gave its find on 17 September 2001

“The commission recommends that an allowance be paid to the officers concerned, the quantum to be agreed between parties.”

A joint meeting was held between Management and the Union to finalize the quantum to be paid and the first payment was effected on December 2001 for the 2001 Marking Exercise.

However, management effected payment to only officers who were involved in marking centres outside MES premises and those working in marking centres situated at the MES Head Office, Redit were not paid allowance.

Management argued that the State Law Office has suggested the pronouncement of the Industrial Relations Commission relates to marking centres outside MES premises and those working in Marking Centres situated at the MES Head Office, Redit were not paid allowance.

The Union is of opinion that the decision of management is not justified. The following 18 points were put forward to support union’s dispute at the Industrial Relations Commission. The

commission gave its recommendation after having taken all the evidence into consideration;

- ❖ The MES Act does not contain duties relating to marking.
- ❖ No mention is made in the scheme of service of work related to marking for employees listed in the Statement of Case.
- ❖ Supervise School Clerks, School Attendants and Usher.
- ❖ Responsible for marking centre and control the in and out of scripts, take responsibility of all scripts and supervise the loading and unloading of scripts from MES to marking centres.
- ❖ Act as liaison officer between MES and the markers, Team Leaders, etc
- ❖ Ensure security in the marking centre. Be responsible for the opening and closing of the centre.
- ❖ Collecting and returning of keys at the Police Station
- ❖ Change in work place which creates disturbance in their daily life.
- ❖ Employees lack welfare.
- ❖ Assure work earlier than normal time and work beyond normal working hour.
- ❖ Leaves are not granted during the exercise.
- ❖ Compelled to work for overtime.
- ❖ No telephone facility.
- ❖ No canteen facility.
- ❖ Work in some risky regions e.g Barkly
- ❖ Officers suffered from stress during that period

Out of the 18 arguments put forward by the union before the commission, only 4 points do not apply to officers working in the marking centres situated at the MES Head Office, Redit.

- ❖ No canteen facility.

- ❖ Change in work place.
- ❖ No telephone facility.
- ❖ Work in some risky region.

The Respondent in return avers that the question of payment of Allowance to staff working in marking centres was resolved by the Industrial Relations Commission following an Industrial Dispute declared by the Union against Management.

In its statement of case, amongst other points, the Union argued that the staff had to:

- (a) act as liaison officers between the MES and the markers, team leaders etc;
- (b) ensure security in the marking centres, opening and closing of the centres; and
- (c) collecting and returning keys at the Police Station.

The Union also argued that the place of work of the employees was at Le Reduit and that during examinations, they had to be transferred to marking centres, often far from their residence and this usually caused disturbance in their daily life. At marking centres, there was lack of welfare, employees had to assume duty earlier than normal and leave late in evening e.g at Art Centre, the time was between 0745 to 1615 hours and French Centre between 0730 to 1800 hours. Other complaints were that leaves were usually not granted, officers were compelled to work overtime, there were no telephone facilities and canteens. Officers were also exposed to risk in regions like Pte aux Sables, Cite Barkly etc especially at night and they suffered from stress.

Finally, the Union stated that unlike at the MES, at outdoor marking centres, the keys of the rooms where scripts were kept fell under the responsibility of Examinations Assistants and Examinations Clerks. No Senior Examinations Officer, Examination Officer or Security Officer was involved.

And the Industrial Relations Commission concurred with the Union on the following points:

The officers mentioned in the statement of case by the Union Worked at MES office at Le Reduit during normal time and had to displace only when marking exercise were organised at the marking centres. In fact the scheme of duties of Senior Examinations Assistant and Examinations Assistants did inter alia include to supervise the work of subordinates involved in the organisation and conduct of examinations which were usually performed at the MES office but no mention was made regarding marking outside the MES office although the Management construed 'organisation' as marking.

The commission also took into consideration the fact that officers had to leave their offices during examination periods and had sometimes to travel long distances to attend marking centres and were responsible for the marking centres as far as the management and control were concerned. The recommendations of the Industrial Relations Commission refer to marking centres which are found outside MES premises where there is lack of welfare and where various facilities do not exist.



The Respondent further avers that the formulation of this grievance implies that allowance has already been paid to staff working in marking centres located outside MES premises and that management has further extended payment of this allowance to officers in other grades not mentioned in the union's statement of case.

It is apposite here to refer to part of the recommendation of the Industrial Relations Commission made on 17 September 2001.

"The Commission had taken all the evidence into consideration. It was of the view that marking centres were in fact under the control of the Examination Superintendents and either the Senior Examination Assistant or Examination Assistant. The Senior Examination Officer was based at the MES office in Le Reduit and was responsible for the supervisory duties over the marking centres. The officers mentioned in the statement of case by the Union worked at MES office at Le Reduit during normal time and had to displace only when marking exercises were organised at the marking centres. In fact the scheme of duties of Senior Examination Assistants and Examination Assistants did inter alia include to supervise the work of subordinates involved in the organisation and conduct of examination which were usually performed at the MES Office but no mention was made regarding marking outside the MES Office although the Management construed "Organisation" as 'marking".

The Commission also took into consideration the fact that officers had to leave their offices during examination period and had sometimes to travel long distances to attend marking centres and were responsible for the marking centres as far as the management and control were concerned. The Union did not deny that they were paid extra allowance for outside normal hours but their claims for a responsibility allowance for the marking centres appeared to be indicated in view of their involvement in marking exercises. The Commission felt that the request for 2% of the basic salary

for every attendance was a bit exaggerated in the sense that there would be marked difference between the senior officers and the junior ones.”

It is clear from a reading of the above that the interpretation to be given to it is that payment of marking allowance is with respect to marking centres which are found outside MES premises where there is lack of welfare and where various facilities do not exist.

Besides, the applicant admitted in cross-examination that the dispute is about the interpretation of the Industrial Relations Committee.

The dispute is accordingly set aside.

#### **Dispute No 4**

##### **Case of Mrs Dusoruth**

“Whether the basic salary of Mrs D. Dusoruth, appointed as Examinations Assistant in 1998 should be increased to be at par with the basic salary of Messrs E. S Appadoo and R. Ancharaz who were appointed Examinations Assistants in 2001”.

The applicant avers that Mrs Deorani Dusoruth joined the MES as Clerk/Typist in 1990. She was promoted to Examinations Assistant in 1998.

Mr R. Aucharaz joined the MES as Exams Clerk in 1991. He was promoted to Exams Assistant in 2001.

Mr E. S. Appadoo joined the MES as Exams Clerk in 1992. He was promoted to Exams Assistant in 2001.

The table below gives an indication of the date the 3 employees joined the MES, the dates they were promoted and their basic salary in March 2002:

NAME	DATE JOINED MES	DATE PROMOTED	SALARY MARCH 2002
Mrs D. Dusoruth	1990	1998	Rs 7,360
Mr R. Aucharaz	1991	2001	Rs 7,770
Mr E. S. Appadoo	1992	2001	Rs 7,565

The applicant avers therefore two staff who joined after her are now drawing higher salary than her.

Mrs Dusoruth was promoted to Exams Assistant 3 years before Messrs Aucharaz and Appadoo, and despite her seniority, she is drawing less salary than the other two staff.

Mrs Dusoruth is making a request so that her salary be revised so as to be at least at par with Messrs Aucharaz and Appadoo.

4((a) The Tribunal cannot unfortunately accede to such request in as much as the case put forward by the Respondent appear reasonable. The witness appearing for the Respondent cogently explained the justifications behind the 3 increments given to Messrs E.S. Appadoo and R. Autharaz. The latter not only hold better qualifications but also their working experience have made them eligible for the extra increments. Also, seniority per se cannot be the magical stick for a re-adjustment of salary. The PRB report supports the contention that added qualifications give a certain incentive by way of increments.

The dispute is set aside accordingly.

Case of Mrs Dhunnoo and others

“Whether the basic salary of Mrs S. Dhunnoo, Messrs K. Chummun, A. Nundloll, and K. Vencatasamy should be adjusted to be at par with Mrs A. Choolun.”

The applicant avers that on 30/04/90, Mrs Dhunnoo was appointed as Temporary Examinations Clerk with basic salary Rs 2,550.

On 01/04/91, Mrs Choolun was appointed as Temporary Exams Clerk with basic salary Rs 2,625.

During the period 1990/91, the initial salary of Exams Clerk (Temporary) was Rs 2,550. On appointment, Mrs Dhunnoo was drawing basic salary Rs 2,550. Whereas on appointment, Mrs Choolun was drawing a basic salary was Rs 2,625 (One increment higher). It is not known why Mrs Choolun was granted one additional increment on her appointment as Temporary Exams Clerk.

On 01/10/90, Mrs Dhunnoo was appointed as Exams Clerk with basic salary Rs 2,625.

On 01/07/91, Mrs Choolun was appointed Exams Clerk with basic salary Rs 2,700. Her salary increased from Rs 2,800 to Rs 3,000.

The 1988 Chessworth Report makes no mention concerning grant of Additional increments (incremental Credits).

The 1993 PRB Report recommends that a Standing Committee be set up for the award of incremental credits for additional qualifications. Its tasks would be to examine each case on its own merits and award accordingly.

The 1998 PRB Report makes a series of recommendations concerning Incremental Credit for additional qualifications.

In October 1996 the basic salary of Mrs Dhunoo was Rs 4,500 and that of Mrs Choolun was Rs 4,750.

On 01/03/97, Mrs Dhunoo was appointed as Exams Assistant with basic salary Rs 5,000.

In 1998 the PRB published it's review of salary in the general service.

On 01/04/00, Mrs Choolun was appointed Exams Assistant with basic salary Rs 7,700.

In July 2002 the basic salary of Mrs Dhunoo was Rs 8,070 and that of Mrs Choolun was Rs 8,370.

In its statement of case the Respondent avers that Mrs D. Dusoruth joined the MES as Clerk/Typist on 17.09.90 at the entry point i.e Rs 2,400.

She possessed only one subject at Principal Level and four subjects at Subsidiary Level. Whereas Messrs Appadoo and R. Aucharaz both joined the MES, the first with passes in three subjects at Principal Level and the second with a full Higher School Certificate. This rendered them eligible to two increments each in view of the fact that they possessed a higher qualification than the normal required qualifications for the post, i.e School Certificate with five credits including English, French and Mathematics and the Higher School Certificate Mrs D. Dusoruth possessed only four credits at SC Level.

Besides, Mr E. S. Appadoo possessed working experience as Production Coordinator and afterwards as Head of Department for Embroidery at Sonia Wear, where he had worked for nearly four years.

This rendered him eligible for additional increments and he was offered a starting salary of Rs 2,700.

As for Mr. R. Aucharaz, he too joined with a full HSC and prior to joining the MES he was already serving as Police Constable from 26.01.89 to 31.03.91 which made him eligible to an additional increment.

In July 1998, with the publication of the PRB Report the salaries drawn by them were as follows:-

Mrs D. Dusoruth	Rs6,275 per month
Mr E. S. Appadoo	Rs 6,425 per month
Mr R. Aucharaz	Rs 6,600 per month

Mrs D. Dusoruth was promoted Examinations Assistant in October 1998. She was granted three increments and started drawing Rs 6,775 arrived as at follows:-

$$6,275 + 150 - 6,425 + 175 + 175 - 6,775$$

When Messrs Appadoo and R. Aucharaz were promoted in their turn in July 2001, the situation was as follows:-

Mr D. Dusoruth	Rs 7,360
Mr E. S. Appadoo	Rs 6,950 + 3 increments of 205 = 7,565
Mr R. Aucharaz	Rs 7,155 + 3 increments of 205 = 7,770

The Respondent avers that Mrs Choolun joined the MES as Examinations Clerk with the following qualifications:-

School Certificate, Higher School Certificate and Association of Computer Professionals.

She was granted three increments when she joined i.e with starting salary of Rs 2,625 ( 75 x 3).

Mrs S. Dhunnoo joined the MES as Examinations Clerk with School Certificate and Higher School Certificate ( 2 principals and 2 subsidiaries)

She was granted two increments when she joined i,e with a starting salary of Rs 2,550 (75 x 2).

While Messrs K. Chummun, A. Nundloll and K. Vencatasamy all joined the MES as Casual Cleaner/Labourer/Watchman or as Casual Labourer/Cleaner, on a daily paid basis, as none of them possessed the minimum required qualification for appointment to the grade of Examinations Clerk. On appointment as Examinations Clerks, the daily paid officers, were granted the entry point in the salary scale.

Meanwhile in October 1992, Mrs Choolun had successfully completed a Diploma in Management Studies (UoM) which qualified her to incremental credits (two additional increments) as compared to the first, Mrs S. Dhunnoo and then to the three newly appointed Examinations Clerks. This resulted in the gap between salaries drawn by them becoming greater and greater to the extent that prior to appointment as Examinations Assistant, they were drawing the following salaries:

Mr K. Chummun

Mrs S. Dhunnoo

Mr A. Nundloll

Mrs A. Choolun

Mr K Vencatasamy

Rs 7,155

Rs 4,500

Rs 4,125

Rs 6,125

Rs 6,275

This is more a storm in a tea cup dispute.

The answers to all the question raised with respect to this dispute are evidently clear in as much as all the parties did not join the MES in the same capacity and with similar qualifications. Incremental credits were awarded to Mrs Choolun for bettering her qualifications, although Mrs Choolun is drawing only one increment more than Mrs Dhunnoo.

The dispute is accordingly set aside.

**Rashid Hossen**

**Vice-President**

**B. Ramburn**

**Member**

**H. Girdharee**

**Member**

**31 March 2004**