

PERMANENT ARBITRATION TRIBUNAL

Award

RN 814

BEFORE

Rashid Hossen	-	Acting President
R. Sumputh	-	Member
B. Ramburn	-	Member

In the matter of :-

Khaleel Jeeroburkhan

And

Central Water Authority

The present dispute has been referred for Compulsory Arbitration by the Minister responsible for Labour, Industrial Relations and Employment in accordance with section 82(1) (f) of the Industrial Relations Act 1973 as amended.

Mr. D. Ramano, of Counsel, appears for the Applicant

Mr V. Ramchurn, of Counsel, appears for the Respondent

The Terms of Reference read:

"Whether Mr. K. Jeeroburkhan should be paid an extra duty allowance in view of his being called upon to sign cheques of value up to Rs 200,000.- on behalf of the Central Water Authority, or otherwise."

Case of the Applicant, Mr. K. Jeeroburkhan

Applicant avers that:-

1. he was appointed as Acting Secretary since 01 March 1991 and was subsequently appointed in substantive capacity in the same post of Secretary on 13 September 1994.
2. he has been regularly signing cheques up to Rs 200,000.- (which constitute the bulk of cheques issued daily by the CWA) along with the Accountant since his acting appointment.
3. he applied as per letter dated 12 December 1995 for payment of a special allowance with effect from the date of his appointment as Secretary.
4. the then Executive Chairman has approved the payment of an allowance subject to the quantum being sorted out by the Staff Committee, as per memo issued on 20 June 1996 to the Human Resources Manager.
5. as there was no positive response to the above request, he submitted another letter dated 06 May to the Executive Chairman.
6. subsequently, a report was requested from the Chief Finance Officer who clearly defined as per letter dated 09 May 1997 the responsibility and involvement in the signing of cheques and vouchers on a daily basis and the sum concerned which has continuously been increasing.
7. thereafter, the Executive Chairman chose to sign cheques to Rs 200,000.- in the stead (of Mr. Jeeroburkhan) until he left in September 2000, after which Mr Jeeroburkhan resumed the signing of cheques.
8. Mr Jeeroburkhan then submitted another letter dated 24 September 2001, insisting on the payment of an allowance of 10% of his monthly salary with effect from September 2000.
9. the above letter was followed by a reminder dated 25 October 2001.
10. Mr Jeeroburkhan became aware that the advice of the parent Ministry (Ministry of Public Utilities) had been sought on the matter and that the CWA was informed that the matter raised was only which rested with the CWA Board. So far, the applicant is aware the matter never came in the CWA Board.

11. another letter dated 06 August 2002 was then addressed to the Officer-in-Charge/General Manager of the CWA informing that should no reply be forthcoming he would declare on Industrial Dispute.
12. a letter dated 30 January 2003 was eventually issued to the General Manager declaring an Industrial Dispute.
13. the matter was referred to the Ministry of Labour and Industrial Relations as per letter dated 07 February 2003.
14. despite several conciliation meetings at the level of the Ministry of Labour with representatives of the CWA no settlement was reached and the matter has finally been referred to the Permanent Arbitration Tribunal by that Ministry.
15. In view of:-
 - (i) the commitment made by the CWA as per memo from the Executive Chairman;
 - (ii) the fact that the signing of cheques is of a special nature and does not form part of the normal duties of the Secretary as per his job specifications;
 - (iii) the responsibility and involvement related to the signing of cheques;
 - (iv) the decision of the Board to authorize the signing of cheques by the Secretary as provided by the CWA Act; and
 - (v) the fact that provision is made by the PRB Report for the payment of an allowance of work done over and above normal duties

the request made for the payment of an allowance representing 10% of the monthly salary of applicant with effect from September 2000 to December 2004 is the total sum of Rs 84,513.- is fully justified and humbly submitted.

Case of the Central Water Authority

The Respondent avers that:-

1. Mr Khaleel Jeeroburkhan joined the Authority as Assistant Secretary on 28 December 1976 and has been appointed Secretary with effect from 13 September 1994. He has retired from the service of the Authority on 16 March 2004.

2. Clause 13 of the Central Water Authority Act (1971) is being reproduced below for the information of the Tribunal:-

"13 *Execution of documents*

- (1) *No deed instrument, contract or other document shall be executed by or on behalf of the Authority unless the approval of the Minister to the execution thereof as first been obtained.*
- (2) *Subject to subsection (1), all deeds, instruments, contracts and other documents shall be deemed to be executed by or on behalf of the Authority if signed by the Chairman and the General Manager.*
- (3) *Any cheques upon any banking account kept by the Board shall be signed by any 2 of the following persons:-*
 - (a) *the Chairman;*
 - (b) *the General Manager; and*
 - (c) *such other officer as may be appointed for the purpose by the Board".*

3. At its sitting on 10 October 1989, the Central Water Board, by virtue of the provisions at clause 13(3)[©] of the aforesaid Act, approved that:-

- (i) cheques up to Rs 100,000.- be signed by the Secretary and the Accountant;
- (ii) cheques above Rs 100,000.- be signed by the General Manager and the Chief Financial Officer.

4. The above amount of Rs 100,000.- has subsequently been revised to Rs 200,000.- by the Central Water board at its meeting of 08 May 1990.

5. It is derived therefrom that as at 13 September 1994, when Mr Jeeroburkhan was appointed to the post of Secretary, those duties of signing of cheques already felt on the incumbent of that post, besides the General Manager, Chief financial Officer and Accountant.
6. In the light of the foregoing, the Authority submits that signing of cheques, up to the limit approved by the Central Water Board, formed part of the cognate duties of Mr Jeeroburkhan, as holder of the post of Secretary of the Central Water Authority.

The salient features of Applicant's testimony are that:-

1. The job specifications which were approved by the Board in July 1975 and by the Minister in August 1975 have remained the same and have never been amended to include any additional duty up to his proceeding on retirement leave. It is only in January 2004 when he had already proceeded on pre-retirement leave that the job specifications for the post of Secretary had been amended to include among others the responsibility for the signing of cheques.
2. At the beginning, there were not so many cheques to be signed. However, with the development in the CWA's work and the increase in the value of cheques up to Rs 200,000.- the volume of work involved had considerable increased.
3. Since the time he has started the signing of cheques, he has always been given the impression by the General Manager that the matter is being taken care and sooner or later he would be paid. So, he continued to sign.
4. As per memo dated 20 June 1996, the then Executive Chairman of the CWA approved the payment of the allowance subject to the quantum being sorted out at the next Staff Committee.
5. In July 1997 the Executive Chairman chose to sign cheques up to Rs 200,000.- when Mr Jeeroburkhan stopped that exercise from that date.

6. The applicant's attention has never been drawn that he was not discharging his duties and no disciplinary measures were taken when he stopped signing cheques.
7. The CWA is governed by the PRB regime for salary structure and conditions of employment. The PRB provides for the payment of an appropriate allowance of work undertaken which was not within the normal scope of the respective schedule of duties.

During cross-examination, applicant conceded that:-

1. The quantum of 10% allowance of his monthly salary is his own calculation. He had to rely on himself although he had recourse to the report of Mr Heeralall to support his point.
2. Concerning the payment of the allowance, he referred to the document 3 dated 20.0696 from the Executive Chairman addressed to the Human Resource Manager. The interpretation of this letter by the applicant is that the Executive Chairman is asking the Human Resource Manager - for payment of an extra allowance to him (the applicant).
3. There has been no Board decision as such to pay him an extra allowance.
4. He was appointed Assistant Secretary in 1976 and then as Secretary in 1994.
5. The applicant is not aware if his predecessor namely Mr Sowdagur has ever been paid any allowance, but he mentions a name of another person in the finance division who, according to him, has been paid an allowance for the signing of cheques.
6. He disagrees that the signing of cheques be it for Rs 1000,000.- or Rs 2000,000.- formed part of his cognate duties.
7. As Secretary, applicant was not entitled to overtime.

Mr Tuyau, representing the Central Water Authority confirmed the correctness of the contents of the Statement of Case of the Authority.

He further stated that:- that:-

- (a) the job specification of Mr Jeeroburkhan in 1975 provided for the performance of public duties and signing of cheques is cognate duties performed by the Secretary which is performed by Mr Jeeroburkhan;
- (b) he has not seen any Board's decision of the Central Water Board relating to payment of an allowance to Mr Jeeroburkhan;
- (c) somewhere in 1977 there was a discussion between Mr Prayag, the then Human Resources Manager and the Executive chairman, Mr Booluck that no allowance is to be paid to Mr Jeeroburkhan; and
- (d) this decision as at (c) followed the letter dated 25 June 1996 addressed by Mr Booluck to the Human Resources Manager.
- (e) when the Board approves that the Secretary is authorized to sign cheques, it entails that the Secretary has the authority to sign cheques, according to the rules or the approval and it makes the cheque valid.
- (f) the job specification of the Secretary which dates back to 1975 does not mention black on white that the Secretary has to sign cheques but this responsibility falls under the item 5 of the duties.
- (g) the Chief finance Officer views that the signing of cheques is very time consuming, tedious, very stressful and carry a heavy responsibility on the signatories.
- (h) Mr Jeeroburkhan stopped signing cheques in 1997 and resumed the signing later in 2000. There were no disciplinary taken against Mr Jeeroburkhan when he stopped signing cheques.

The Tribunal notes that the applicant's job specifications which have been approved by the Central Water Board on 30 July 1975 and approved by the Minister of Energy and Water Resources on 8 August 1975 mentions at item 5 to perform "any other duties assigned by the General Manager".

Furthermore, on 10 October 1989 the Central Water Board by virtue of the provisions at clause 13(3) (c) of the Central Water Authority Act approved that cheques up to Rs 100,000.- be signed by the Secretary and the Accountant. The amount of Rs 100,000.- has subsequently been revised to Rs 200,000.- by the Central Water Board at its meeting of 08 May 1990.

Applicant having been appointed Secretary with effect from 13 September 1994, the duties of signing cheques besides the General Manager, the Chief Financial Officer and the Accountant.

Concerning the request of the applicant to pay him an extra duty allowance, we find no document from the Central Water Authority Board to pay any allowance. (The underlining is ours).

There is a document dated 20 June 1996 from the then Executive Chairman, Mr H. K. Booluck addressed to the Human Resources Manager which read as follows:-

"Could you please see to it that the Secretary, Mr Jeeroburkhan be authorized to sign cheques up to Rs 200,000.- against payment of an allowance, the quantum of which will be sorted out at the next Staff Committee."

Applicant is relying on this document to support his claim. However, the wish of the Chairman must have the blessings of the Board and it was up to applicant to adduce evidence of any authority delegated. Applicant indeed allowed himself to be lured that he would be receiving a payment. He has only himself to blame for **Sections 14 to 19 of the CWA ACT** stipulate:

Part III – STAFF OF THE AUTHORITY

14 General Manager

- (1) The General Manager shall be appointed by the Minister on such terms and conditions as he thinks fit.
- (2) The General Manager shall act in accordance with such directions as he may receive from the Board or any delegate appointed by the Board under section 17.

[Amended 4/85]

15 Appointment of officers of the Authority

- (1) The Authority may appoint or employ, on such terms and conditions as the Authority may, with the approval of the Minister, determine, such officers as may be reasonably necessary for the purposes of or in connection with the discharge of its duties under this Act.

- (2) -

16 Officers deemed public functionaries

All officers of the Authority shall be deemed to be public functionaries with the meaning of the Criminal Code

17 Delegation of powers

- (1) The Board may, subject to such conditions as it thinks fit, delegate to the Chairman all or any of its powers, functions and duties, except the power to invest and borrow money.
- (2) The Chairman may, with the approval of the board, delegate in writing to the General Manager or to any other officer any power delegated to him under subsection (1). [Amended 4/85].

18 Superannuation scheme

The authority shall make provision for a staff superannuation scheme in relation to all its officers and servants.

19. Other provisions in relation to staff

The Authority may make provision, in such form as it may determine, to govern the conditions of service of its officers and in particular, but without prejudice to the generality of the foregoing, to deal with –

- (a) the appointment, dismissal, discipline, pay and leave of, and the security to be given by, officers;
- (b) appeals by officers against dismissal and other disciplinary measures;
- (c) the establishment and maintenance of medical benefits and loan funds and the contributions payable to and the benefits recoverable from them.

On the other hand, at Management level a common discussion between Mr Prayag, the then Human Resources and the Executive Chairman resulted in that no allowance is to be paid to Mr Jeeroburkhan. We quote document G from the personal file of Mr Jeeroburkhan:-

“Discussed with the Executive chairman. No allowance is to be paid the more so as Mr Jeeroburkhan holding the post of Secretary may required to perform such duties under “any cognate duties” as spelt out in the job specification for the post” – dated 20 June 1997.

Counsel for applicant observed that if we contrast the job specifications of the Secretary of 1975 with that of 2004 we will see that the duty of signing cheques have been added only in 2004 after the dispute has been declared. Perhaps the time has come to avoid further confusion.

No doubt new elements are often added to job specifications with time. What is important is item 5 of the job specification of 1975 and part (j) of the 2004 job specification which reads:- “To perform any other duty as may be assigned by the General Manager” – thus including the signing of cheques among other duties.

Mr Ramano stated that no disciplinary action was taken against Mr Jeeroburkhan when he stopped signing of cheques between year 1997 and year 2000. This, according to him, is the circumstances which support the fact that the signing of cheques was not his duties.

Whether the Central Water Authority should have taken disciplinary measures against the applicant or not is another matter. But the fact remains that by virtue of the provisions at clause 13 3) (c) of the Central Water Authority Act, the duties of signing cheques fall within the scheme of his duties.

Finally the applicant tried to gain support from the PRB report while according to him provisions for the payment of an appropriate allowance for work undertaken which was not within the normal scope of the respective schedule of duties. He added that the PRB lays stress on the kind of work which required mental effort.

An extract of PRB report of 2003 reads:-

“EXTRA Duty Allowance

Presently an officer who is not entitled to overtime may be granted an extra duty allowance determined by the Permanent Secretary, Ministry for Civil Service Affairs & Employment for:-

- (i) working under exceptional pressure and extra and irregular hours
in connection with special assignments such as conferences, enquiries, seminars and workshop; or
- (ii) undertaking work not within the normal scope of his schedule duties.

Recommendation 8

10.5.29 We recommend that the qualifications for eligibility for extra duty allowance be maintained.

Special Duty Allowance

10.5.30 There are certain instances where it is not possible to compute extra duty allowance for one reason or another. In such instances, subject to the prior approval of the Permanent Secretary, Ministry for Civil Service Affairs & Employment, a special duty allowance is paid to senior officers where it has been ascertained that they are actually performing special or extraneous duties.

Recommendation 9

10.5.31 We recommend that the present arrangements regarding the payment of special duty allowance be maintained”.

Nothing precluded the Applicant if it is confirmed that he is not entitled to overtime to refer his request to the Permanent Secretary, Ministry for Civil Service Affairs & Employment. But he must first satisfy the requirement that the work he undertook did not fall within the normal scope of his schedule of duties

We fail to see how the PRB report 2003 can come to his rescue, be it a special duty allowance, where the approval of the Permanent Secretary, Ministry of Civil Service Affairs and Employment is required.

After going through all the documentary and testimonial evidence including submissions of counsel, the Tribunal finds that:-

1. the signing of cheques up to Rs 200,000.- formed part of the duties of the applicant.
2. there is no Board decision of the Central Water Authority to pay extra duty allowance to the applicant.

The Tribunal finds no merit in applicant's claim and set aside the dispute.

Rashid Hossen

Ag President

B. Ramburn

Member

R. Sumpth

Member

Date: 26 April 2006