

PERMANENT ARBITRATION TRIBUNAL

AWARD

RN 797

BEFORE

Rashid Hossen	-	Acting President
Masseelamanee Goinden	-	Member
Binnodh Ramburn	-	Member

In the matter of:

Mr J. Soobrayen & Others

And

Sugar Insurance Fund Board

The following disputes have been referred by the Minister in charge of Labour, Industrial Relations and Employment in accordance with Section 82(1) (f) of the Industrial Relations Act 1973, as amended

J. Soobrayen and Others are hereinafter referred to as the Applicants, and Sugar Insurance Fund Board, as the Respondent.

The Terms of Reference read:-

- "(i) Whether the existing posts of Assistant Inspector should have been redesigned as Fields Operations Supervisor.*
- (ii) Whether priority of consideration for appointment as Area Manager should be given to Assistant Inspectors in preference to outside candidates.*
- (iii) Whether the Board should fix the "alternative qualifications" acceptable to the Board, before filling the vacancies for the new post of Area Manager."*

In their Statement of Case, the Applicants aver:

1. There are 26 Assistant Inspectors employed by the Sugar Insurance Fund Board.
2. The posts of Assistant Inspectors are now scheduled as "evanescent".

3. **ESTABLISHMENT OF INSPECTORATE**

- 3.1 Until the year 1996 there were three grades of inspectors in the inspectorate:

POST	NO OF POSTS
Senior Inspectors	6
Inspectors	13
Assistant Inspectors	33

- 3.2 The Senior Inspectors were each in charge of a sub-office.
- 3.3 There are 6 sub-offices and there were one or 2 Inspectors for each sub-office. Of the others, some assisted with the Surveys. Others with the special unit for land conversions, attendance in Court etc.
- 3.4 The Assistant Inspectors were posted at the different sub-offices or the special unit.

4. **REORGANIZATION OF 1996**

- 4.1 There was a reorganization in 1996 and a Voluntary Retirement Scheme set up.

As a result there were in post only:-

SENIOR INSPECTORS	:	2
INSPECTOR	:	1
ASSISTANT INSPECTORS	:	26

Since then, one of the 2 Senior Inspectors and the Inspector have retired. The post of Senior Inspector has now been restyled as Area Manager and the Senior Inspector in post has been offered the job of Area Manager. Subsequently he has been promoted to the post of Manager Inspection. The net result is that there is no holder of the post of Inspector and Area Manager.

4.2 In the year 1998 the Board appointed Mr Ramchurn, the Head of the PRB, as Salaries Commissioner to review the Salary Structure and conditions of service of the Staff of the SIFB.

5.1 The Salaries Commissioner has recommended (in so far as the Inspectorate is concerned) posts of:-

- (a) Area Managers: to take overall charge of a sub office;
- (b) Technical Officer Grade 1: to inspect and report on cane plantations to large planters and sugar estates;
- (c) Technical Officer Grade II: to inspect and report on cane plantations as directed by the Technical Officer Grade I.

5.2 Following the implementation of the Voluntary Retirement Scheme referred to in paragraph 4.1 above, Assistant Inspectors have been required over the last 6 years to perform the duties of the Senior Inspectors and Inspectors who have retired.

5.3 It is clear that:-

- (i) Several Assistant Inspectors have been performing duties which are to be performed by the Area Managers, and manning the sub-offices with a responsibility allowance of Rs 1,000.- per month which has now been increased to Rs 2006.25 (Post PRB) ; and
- (ii) The remaining Assistant Inspectors are performing the duties which it is proposed to assign to Technical Officers Grade I now renamed as Field Operations Supervisor by the PRB Report.

6 FILLING OF THE VACANCIES

- 6.1 Mr Ramchurn in his Report recommended higher qualifications for the posts of Area Manager and Technical Officer Grade I as follows:-

AREA MANAGERS

1. Degree in Agriculture plus 5 years' relevant experience in inspection of cane plantations;

OR

Land Surveyor's Commission plus 5 years relevant experience;

OR

Diploma in Land surveying plus 10 years relevant experience

OR

Alternative equivalent qualifications acceptable to the Board.

TECHNICAL OFFICERS, GRADE I

1. School Certificate or GCE O Level in 5 subjects at one and the same sitting.
2. HSC or 2 "A" Levels or equivalent at one and the same sitting.
3. Diploma in Agriculture or Sugar Technology or equivalent OR diploma in Land Surveying or equivalent OR Alternative qualifications acceptable to the Board.

"However, the PRB Report 2003 recommends as follows:

"62.9 Recruitment "For a more efficient functioning of the organization experience acquired by officers in other grades should be gainfully utilized."

The disputants have made representations that

- (a) the new posts designated Area Manager and Technical Officer Grade I now renamed Field Operations Supervisor, are assigned duties which, generally, were being performed by respectively Senior Inspectors, Inspectors and Assistant Inspectors. At present there are no posts of Inspector or Senior Inspector, which posts have been restyled as Area Manager;
- (b) in many cases, for example, for the posts of:-
 - Senior Field Officer;
 - Field Officer
 - Senior Accounts Officer;
 - Accounts Officer; and
 - Senior Data Processing Clerk

The posts have merely been restyled and the holders have retained their posts. Therefore, the same principle should have been applied and the posts of Assistant Inspector designated Technical Officer Grade I.

- 6.2 It was also represented that, so long as there are officers having the required experience who have been performing the duties of the newly created posts of Area Manager, the Board should have given priority of consideration to these officers before inviting applications from outsiders.
- 6.3 On the 3 May 2001 the Board has invited applications for appointment to
 - (a) the posts of Area Manager by public advertisement; and
 - (b) the posts of Area Manager and Technical Officer Grade I, by internal circular.
- 6.4 The circulars inviting applications for the posts do not specify what are the "Alternative qualifications acceptable to the Board".
- 6.5 The report of Mr Ramchurn (as shown in paragraph 6.1 above) provided that appointment to both posts –

- (a) be open also to persons holding "alternative equivalent qualifications acceptable to the Board"; and
- (b) for the first intake consideration be given to officers from the grade of Assistant Inspector possessing alternative acceptable qualifications".

6.6 The Board had, accordingly, the duty to decide what were the "alternative qualifications" which it was prepared to accept and to notify all officers of the fact because they were entitled to apply for appointment to both the posts of Area Managers and the posts of Technical Officers Grade I.

6.7 By failing to do so before inviting applications for the posts, the Board has reserved to itself the possibility of deciding the question after being in presence of the applications. As a result the Board may exclude the disputants from consideration for the posts of Area Managers; while opening the door to outsiders not having the prescribed qualification which the Board may decide to consider as acceptable, after receiving the applications.

The points in dispute are –

- (i) whether the existing posts of Assistant Inspector should have been redesigned as Field Operations Supervisor;
- (ii) whether priority of consideration for appointment as Area Manager should be given to Assistant Inspectors in preference to outside candidates; and
- (iii) whether the Board should fix the "alternative qualifications" acceptable to the Board before filling the vacancies for the new post of Area Manager.

Under head 1 of the Dispute

An Assistant Inspector before being promoted to this post was a Senior Field Officer. Before that the Senior Field Officer was in the grade of field officer.

Previously there were 13 posts of Inspector and an assistant Inspector had the legitimate expectation to be promoted to the post of Inspector and eventually Senior Inspector in due course. With the abolition of the post of Inspector, an Assistant Inspector can legitimately claim to be appointed to the grade nearest equivalent to the grade of Inspector. However, the next nearest grade is that of Field Operations Supervisor which is lower than what the grade of Inspector was.

Those Senior Field Officers who were not promoted to the post of Assistant Inspector are now being given the opportunity to be promoted to the post of Field Operations Supervisor, as such they will become the Seniors of the Assistant Inspectors, when they have always been Junior to the Assistant Inspectors and they have been and still are working under the supervision of Assistant Inspectors for the past 11 years.

Besides, the confidential reports of the officers of the Grade of Senior Field Officers are filled in by the Assistant Inspectors acting as above and the annual increments are given on their recommendation. The Assistant Inspectors find it strange that the Senior Field Officers would be made to overpass the Assistant Inspectors. Therefore, the Assistant Inspectors legitimately claim that they should be redesignated as Field Operations Supervisors.

Under Head II of the dispute

At present all the work of Area Managers are being performed by Assistant Inspectors since about 6 years except for one Area Manager who was in post till about 2001 when his work also was assigned to an Assistant Inspector.

Being given that the Assistant Inspectors have performed the duties of Area Manager to the satisfaction of everybody and also that on their recommendation a compensation amounting to Rs 3,950,000,000.- has been paid to planters from 1998 to 2002 and that they have had no adverse report. It is legitimate that the Assistant Inspectors can claim to

be appointed to the post of Area Manager, especially after having performed the job satisfactorily for a period of 6 years.

Under Head III of the dispute

Experience and satisfactory performance of the job should have priority of consideration over academic qualifications, especially as the Assistant Inspectors have satisfactorily performed the functions attached to the post of Area Manager. It is strange that after 6 years of good and efficient service, the Assistant Inspectors are being made to feel that they are not good enough for the post.

Field/Operations Supervisor

Recruitment to the grade of Technical Officer grade I, now restyled Field/Operations Supervisor is , at present, made by selection from among Technical Officers Grade II, now restyled Senior Field Officers holding the prescribed academic qualifications of the grade. For a more efficient functioning of the organization, experience acquired by officers in other grades should be gainfully utilized. In the context, the PRB reviews the entry requirements of the grade to allow Assistant Inspectors to be considered for appointment therein.

Recommendation 3

We recommend that, in future, recruitment to the grade of Field/Operations Supervisor should be made by selection from among officers in the grades of Senior Field Officer and Assistant Inspectors possessing the prescribed qualifications.

In reply to the above Statement of Case, the Respondent avers:

The SIFB states that there have been in the course of the last years a considerable number of changes in the sugar industry. Further important changes are expected with the

gradual implementation of the Sugar Sector Strategic Plan and the evolution of the sugar industry at large.

For example:

- (i) the number of hectares of land under sugar-cane cultivation has dropped and will drop further in the future, coupled with the uncertain sugar price obtained (the SIFB earns a percentage of the total sugar proceeds as its General Premium Income (GP) itself dependant largely on the island-wide ranking); this will imply a reduction in the revenue of the SIFB.
- (ii) Technologies have changed, and the use of latest technologies require qualified persons in different fields, e.g. it is contemplated to use satellite images through remote sensing as one of the tools for the determination of the healthiness of the crop, and this requires investment in terms of equipment and sophisticated labour.

A mid-term review of the Sugar Sector Strategic Plan is in progress and the SIFB is bound to further modernize its activities and reduce its overheads. In the light of the above, the SIFB considers that a full review of its present staff is required to meet the challenges in the near future. The Board is contemplating carrying out a Strategic Study to position itself to meet the oncoming challenges.

The SIFB has thus decided to freeze the posts under reference, along with certain other posts, pending a complete review and the study being undertaken in line with the recommendations made by the Sugar Sector Strategic Plan.

The whole dispute pending before the above Tribunal has thus no justification, in as much as several posts, including the posts in lite, are frozen.

UNDER DISPUTE (a)

The SIFB views that it is not possible to re-designate the post of Assistant Inspector to that of Field Operations Supervisor (formerly Technical Officer Grade I), for the following reasons:

- (i) the post of Field Operations Supervisor is a promotional one from the grades of Senior Field Officer and Assistant Inspector. The post of Assistant Inspector is lower in grade to the post of Field Operations Supervisor in the Establishment of the SIFB and the post is to be filled through a competitive exercise.
- (ii) the SIFB must ensure that the post of Field Operations Supervisor be given to those who can in the near future be able to adapt themselves to the coming changes;
- (iii) the SIFB must ensure that persons at the post of Field Operations Supervisor have the necessary skills and qualifications to be appointed at such post. Otherwise, this would mean a fall in the quality of service provided by the SIFB, one of the pillars of the sugar industry. The SIFB should not be forced to appoint at the post of Field Operations Supervisor persons who may not have the required skills and qualifications.
- (iv) Re-designating the post of Assistant Inspector to that of Field Operations Supervisor would mean that several persons who may not hold the required skills and qualifications for a higher grade i.e. Assistant Inspector, would be promoted automatically to a higher grade, in spite of the fact that they may not have the required skills and qualifications for the higher grade.
- (v) In its review, the "Salaries Commissioner" did not propose a 'straightforward' re-designation of the post of Assistant Inspector to Technical Officer Grade I (now Field Operations Supervisor), the post of field Operations Supervisor being a promotional one from lower grades. This attitude was meant to allow the board to recruit officers who are capable of discharging their duties efficiently.

UNDER DISPUTE (b)

The SIFB views that it is not possible to give priority of consideration for appointment as Area Manager to Assistant Inspectors in preference to outside candidates, for the following reasons:

- (i) the post of Area Manager is an even higher a post than that of Field Operations Supervisor. Therefore, the SIFB has to be more cautious in dealing with appointments, i.e. , qualifications and skills, future forthcoming review. Moreover, the responsibilities of the "Area Manager" have to be redefined in view of the ongoing changes in line with the Sugar Sector Strategic Plan.
- (ii) The underlying principle for appointment as Area Manager would be for the applicants to have the necessary qualifications skills. Persons from inside may be qualified for certain jobs up to a certain level, but may not be qualified for appointment at posts at a higher level.
- (iii) Giving Assistant Inspectors preference towards outside candidates may result in people holding jobs for which they do not have the necessary qualifications and skills.
- (iv) It is not contested that holders of appropriate qualifications and skills already employed at the SIFB may be preferred to outside candidates, and this is the very purpose why applications were sought from outside and inside.
- (v) The SIFB being a public body having public duties provided by law, cannot fetter its public duty and gives the individual interests of some of its employees priority over its public duty.

UNDER DISPUTE (c)

This question is not of actuality, because as stated above, several posts including the posts in lite, have been frozen for the time being.

Whatever be the case, any alternative qualifications shall be what is satisfactory to the Board.

A complete review of the existing structure once completed may result in different jobs with different skills and qualifications being defined in view of what takes place in the industry, and the use of higher technologies may lead to the cancellation of certain existing jobs.

The Sugar Insurance Fund Board prays that the above disputes be dismissed or alternatively set aside. With costs.

Submissions were offered by the parties as follows:-

Counsel for the Respondent argued that the Applicants had signed an Option Form accepting new terms of employment suggested by the PRB and that this would bring into play the new definition of industrial dispute which has been amended by Act 13 of 2003. Counsel referred to Section 2 of the Industrial Relations Act and submitted that this clearly defines the meaning of 'industrial dispute' – a contract of employment or a procedure enforcement, 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 Form to be governed by the corresponding recommendations made in a report of the Pay Research Bureau. This therefore puts the case out of the Tribunal.

Counsel for the Applicants submitted that the amended Act cannot put an end retrospectively to a dispute which had started much prior i.e. when the letter was sent to the Minister. The amendment, according to Counsel, cannot deprive the Applicants of their right to come before the Tribunal to vindicate their right.

We find there is no dispute regarding the fact that those disputes as per the Terms of Reference concern "remuneration or allowance of any kind".

The issues addressed in the submission of both Counsel had been dealt with in a ruling delivered in RN 743, **André Chung Chuen Yeung And Municipal Council of Port Louis in presence of Ministry of Local Government** which we reproduce partly here

"A recent amendment to the Industrial Relations Act reads as follows:-

"Section 2 of the principal Act is amended –

- (a) in the definition of "industrial dispute" by deleting paragraph (a) and replacing it by the following paragraph –
- (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) 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."

Section 2 of the principle Act previously defined "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) a contract of employment or a procedure agreement;
- (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.".....

There is evidence on record that the Applicant has signed the Option Form and has chosen to be governed by the PRB Report 2003 and the issue remains whether he has relinquished his rights for his application to be entertained by the Permanent Arbitration Tribunal.

Counsel for the Respondent argued that to the extent a person, as an employee of the Civil Service or Local Organisation has opted to be governed by the revised condition as per the PRB Report, no dispute can be referred to this Tribunal, and this despite the fact that the law has no retrospective effect.

Counsel for the Applicant took a contrary stand. He submitted that the Industrial Relations Act Amendment Act 2003 which was passed in June 2003 only came into effect as from June 2003 and it is inapplicable to the present matter for the following reasons:-

- (a) the Tribunal was seized of this matter following a reference from the Minister which dated back to the 1st November 2002, at a time when the Industrial Relations Act Amendment Act 2003 had not yet come into being;
- (b) the present reference is a compulsory one by virtue of Section 82 of the Industrial Relations Act;
- (c) the Industrial Relations Amendment Act 2003 restricts the definition of an industrial dispute with effect from 2003 and does not purport to amend part 7 of the Act which deals with the jurisdiction of the Tribunal.....

It is not disputed that the reference in the present matter was made before the coming into effect of the new Industrial Relations Act Amendment Act 2003. The Tribunal therefore had already been seized of a dispute compulsorily referred to it by the Minister. The Law that was introduced to amend the meaning of "industrial dispute" does not have any retrospective effect and there is no qualifier as to the time it was to come into effect except the following: "Passed by the National Assembly on the thirteenth day of June two thousand and three", and assented by the President of the Republic on 13.06.2003 .

It is our considered view that although the Legislator intended that disputes in relation to the PRB Report should be channelled to the PRB in view of the methodology used and the impact of relativity of remuneration and allowances across all sectors of the service for the making of appropriate recommendations, the Legislator could not have intended that this ought to have retrospective effect or they would have expressed such intention clearly and explicitly.

It would be wrong and unfair in our mind to view that the Tribunal is only seized of the dispute when it starts hearing evidence when in fact the Tribunal has already been seized of it when it was referred to it. There may have been a redefinition to the meaning

of "industrial dispute" but that cannot deprive the applicant's claim from being entertained by the Tribunal despite having signed the Option Form, which in the light of what we have already said, became necessarily a void exercise in the present case."

In the light of that ruling, it stands to reason that the present matter deals with a reference that came after the passing of the amendment to the Act.

The Tribunal therefore considers it has no jurisdiction to hear the present matter.

With regard to the issue of signing of Option Form, we refer Counsel to a ruling delivered in **Telecommunications Workers Union and Mauritius Telecom (RN 754)** and the Award of **Union of Mauritius Academic Staff Association and University of Mauritius (RN 890):-**

"Academics who sign contract that includes such a term have clearly and manifestly surrendered their right voluntarily to participate in active politics. They have knowingly exercised an option to which they are bound. We cannot at any moment think that at the level of Lecturers, although layman, they cannot understand such basic knowledge that a contract is a binding document. The Permanent Arbitration Tribunal in a ruling delivered in RN 754 had this to say on the issue of Option:

"We need to address our mind on the issue of Option Form first. True it is that in a few past Awards, the Tribunal held that a dispute may be declared notwithstanding the signing on an Option Form agreeing on new Terms and Conditions of employment.

This present Tribunal respectfully disagrees with that Obiter Dictum. Adopting such a course would in our view allow employees to having it both ways. The very fact of putting their signatures on the new Terms and Conditions of Employment is an act of finality. To

come and say that they disagree over what they agreed can only lead to some sort of absurdity and thus rendering 'caduc' the contract they signed. We are further comforted in our stand by the amendment introduced by the legislature in July 2003 regarding Option Form...

We find therefore that in the light of such recent amendment brought to the Industrial Relations Act in respect of PRB Awards, it is already against Government policy to have matters which have been considered and not agreed upon in the course of negotiations be reconsidered by way of industrial dispute immediately after an agreement has been reached between employers and employees arising out of the same negotiations."

For the reasons stated above, the disputes are set aside.

Rashid Hossen

Ag President

Masseelamanee Goinden

Member

Binnodh Ramburn

Member

Date: 31st July 2006