

PERMANENT ARBITRATION TRIBUNAL

AWARD

RN 861

Before :

Rashid HOSSEN	-	Ag President
Binnodh RAMBURN	-	Member
Rajendranath SUMPUTH	-	Member

In the matter of:

Mr Latchmeelall MATHOORAH
And
Mauritius Telecoms Ltd

This dispute has been referred by the Minister of Labour, Industrial Relations and Employment for compulsory ARBITRATION by virtue of **Section 82 (1) (f) of the Industrial Relations Act 1973** as amended.

Mr L. Mathoorah is hereinafter referred to as the Applicant and the Mauritius Telecoms Ltd as the Respondent.

Both Parties were represented by Counsel.

The point in dispute is:

"Whether Mr L. Mathoorah should be promoted to the post of Specialist Tradesmen, or otherwise".

In its amended Statement of Case, the applicant avers as follows:

He joined the service as Motor Mechanic with the Telecoms on 20/12/1983. He has worked for over 20 years without any adverse report and still the Head of Department has refused to make any recommendation. On several occasions he tried to ask for his transfer in another department but his requests were turned down. Had he been allowed to change job as T.M. 1, he would have had a better career development. His friend Mr Rohit Abbana who joined as mechanic, the same year, was promoted leading tradesman. Mr A.K. Hawaldar joined as T.M 1 and was transferred to Power and Air Conditioning Section and is now presently serving as Inspector. The Head of Department who has a discretion for the recommendation has unfairly, unreasonably and in an unjust manner without reason whatsoever failed to make the recommendation thus depriving the applicant, the right for a promotion. He should have been appointed as a specialist tradesman but in fact a recommendation should come from his superior which is not forthcoming, is depriving him of his chances of promotion.

In its amended Statement of Case, the Respondent avers:

Mr R. Abbanah (born 23.3.1954) who joined the company on the same date as Mr Mathoorah (born on 26.11.1958) is Senior to the latter by virtue of age. As there was only one vacancy at the level of leading tradesman, Mr Abbanah was promoted accordingly. All those who satisfied the criteria for upgrading to specialist tradesman in the Commercial and Network departments were upgraded. In accordance with the terms of the agreement, management had requested a report from the Head of Division where Mr Mathoora is posted. In the present case, the latter confirmed that there was no requirement for specialist tradesman at the workshop. It is not correct to say that no action was taken by management. In fact, following a conciliation meeting at the Ministry of Labour, Industrial Relations and Employment in May 2004, management stated that it would endeavour to find a suitable posting for Mr Mathoora, in view of the fact that there was no scope for promotion in the Support and Maintenance Division. However, this could not materialise in view of the fact that there was no such requirement matching Mr Mathoorah's profile in other departments. Mr Mathoora (though presently a tradesman in the salary scale SS3) is drawing salary at step 29 which is one increment above the top scale SS3. Today Mr Abbanah is already occupying the position of leading tradesman

at the salary scale SS4 in the Support and Maintenance Division. The upgrading of Mr Mathoora at this level will create a conflict of interest as Mr Abbanah is his immediate supervisor.

Applicant confirmed to the contents of his Statement of Case.

Mr Mohammed Allesuib, Head of Support and Maintenance Division of the Mauritius Telecom Ltd testified to the effect that Mr L. Mathoora was given a special increment during the re-organisation (when Mr Abbanah was made Leading Tradesman). Both had the additional increment however; Mr Abbanah continued on the salary scale, step 29, to reach a salary of Rs 19,649 when Mr Mathoora stopped at Rs 17,902. As regards the proposal to give a status personal to Mr Mathoora being at par with Mr Abbanah, he said that he cannot accede to that proposal as this would create a conflict of interest as Mr Abbanah is his immediate superior. He added that had Mr Abbanah not been senior to Mr Mathoora surely by virtue of age (both joined Mauritius -Telecom on the same day), Mr Mathoora could probably have been made leading Tradesman in 2002 (now replaced by the post of specialist tradesman).

He conceded during cross-examination that there are two workshops, one for mechanic and the other for Blacksmithing. There is one engineer, one inspector and at the mechanical workshop there are one leading tradesman (Mr Abbanah) two mechanics, and that if these would have been another post, Mr Mathoora would definitely been promoted and there are no complaints against him.

The only criteria taken into consideration to promote Mr Abbanah instead of Mr Mathoora is seniority in terms of age.

The Tribunal having examined all the statements of case, documents produced and testimonial evidence reaches the following conclusion:-

The only criteria considered in his case was date of birth.

The Head of Department, responsible for recommendation of applicant, is not even aware of his qualification.

The applicant was given a special increment because he was not promoted. The very fact of allowing him to benefit from a special allowance, although respondent is reluctant to calling it a compensation, amounts to a wrong that Respondent felt it caused to Applicant.. The only criteria considered was date of birth. The Respondent did not adduce evidence to support that seniority by virtue of age is a pre-requisite condition for promotion in the contract of employment. Indeed, Counsel for the Respondent was bold enough to admit that it is only his instructions to state that if all criterias are equal then, seniority by virtue of age would come into effect. He added that such statement is being made with difference. Some sectors do consider age as a criteria and this depends also on the particular circumstances. But we consider that if such is the case, the party averring it must be able to substantiate it. We find the following in the latest **PSC Regulations**:-

“Seniority” means the relative seniority of officers and, except as may be otherwise provided by the Commission or in these regulations, shall be determined and shall be regarded as having always been determined as follows –

- (a) *as between officers of the same grade or class –*
 - (i) *by reference to the dates on which they respectively entered the grade or class;*
 - (ii) *where any officers entered that grade or class on the same day, by reference to their seniority in the next lower grade or class on the day immediately preceding that day;*
 - (iii) ***where any officers who entered the same grade or class on the same day did so by appointment and not by promotion (excluding promotion from a non-pensionable to a pensionable grade or class), their seniority relative to each other shall be determinable by reference to their respective ages;***
- (b) *as between officers of different grades or classes on the same salary scale or the same flat rate of salary, by reference to the dates on which they respectively entered their grades or classes;*
- (c) *as between officers of different grades or classes on different salary scales, by reference to the maximum point on their salary scales, a flat rate of salary being regarded for this purpose as a salary scale with a maximum point equivalent to the flat rate;*

Provided that when assessing the seniority of a pensionable public officer, unbroken service by himself or any other person in a non-pensionable capacity shall only be taken into account in so far as during such service the officer or other person concerned was fully qualified to serve in the grade or class in question on pensionable terms”

We highlighted paragraph (a) (iii).

The Head of Department voices contradictory opinions. He is not ready to accept Mr Mathoorah to become at par with Mr Abbanah, on the other hand he admitted that there are cases where lower officers draw higher salary. He himself was an engineer when he joined the Mauritius Telecoms, where the technicians were getting higher salary than him, but the authority was his.

The Tribunal regrets the circumstances the Respondent allowed itself to be confused on the issue of Applicant being a panel beater.

According to Respondent, seniority by virtue of age becomes the rule when all other criterias are considered equal. But Respondent was not even interested to know anything about applicant's qualification.

We consider that the creation of a new post will not be appropriate in view of the workforce in the workshops.

Since we consider that a wrong was done to the Applicant, we invite Respondent to look into aligning his salary which should be personal to bearer to that of Mr Abbanah.

A salary, personal to bearer, aligned to that of Mr Abbanah is to be paid to Mr Mathoorah, with effect from end of December 2006.

The Tribunal awards accordingly.

Rashid HOSSEN

Ag President

Binnodh RAMBURN

Member

Rajendranath SUMPETH

Member

Date: 30 October 2006