

## PERMANENT ARBITRATION TRIBUNAL

### AWARD

**RN 904**

**Before:**

<b>Rashid HOSSEN</b>	-	<b>Ag President</b>
<b>Binnodh RAMBURN</b>	-	<b>Member</b>
<b>Masseelamane GOINDEN</b>	-	<b>Member</b>

**In the matter of:-**

**Transport Industries Workers Union  
And  
National Transport Corporation**

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.

The Terms of Reference read:-

**“Whether Mr Romill Gajadhur, Mechanic, at Bonne Terre Depot should have been promoted to the post of Workshop Supervisor or otherwise”.**

Mr D Ramano, of Counsel appears for the Applicant.

Mr G Ithier, of Counsel appears for the Respondent.

In the Statement of Case, on behalf of the Applicant, it is averred that:-

- (a) He has applied for the post of Workshop Supervisor in 1997 (interview held in 1998) and in 2001 (interview held in 2002).

The National Transport Corporation (The NTC) intended filling vacancies in the grade of Workshop Supervisor through the appointment of employees already listed.

- (b) He is claiming that the prescribed regulations regarding the filling of vacancies in the public transport industry should be respected.
- (c) He contends that he has unjustly been bypassed in 1998 and in 2002. The persons appointed are his juniors and having less experience as mechanic.

Annex to the Statement of Case is a statement from the Applicant where we read that:-

1. He is working as a mechanic at the NTC since 1987.
2. He has
  - (a) an ITTC certificate as mechanic and has attended several courses and
  - (b) a G.C.E certificate with three subjects
3. In December 2002, he was awarded a Certificate of Appreciation for long years of service by the NTC.
4. Since 1996 his Head of Department has relied on him on several mechanical modifications made to buses.
5. As per his experience and knowledge, he can make various modification works to buses and without plans or layouts from the Head of Engineering.

6. In 1998 and in 2002 he has been called for interview for the post of Workshop Supervisor.
7. He is sure of having answered correctly to all the questions put to him.
8. However, other mechanics with less years of service, without any technical certificate, have been promoted,
9. His assistant is on the waiting list to be promoted.

The Respondent, in its Statement of Case, avers that:-

1. In accordance with Regulation 6, the post of Workshop Supervisor was advertised internally on the 28 March 2001 and the closing date was the 17 April 2001. Sixty-two employees of the Corporation including the Applicant submitted an application form. There were 5 vacancies of that post to be filled.
2. Those 62 Applicants were convened for an interview on the 26 and the 27 February 2002. During the interview the technical capacity and knowledge of each applicant were tested.
3. Following this exercise the interviewing panel recommended the appointment of 5 of the applicants to the Management. The Management accepted the said recommendation and appointed those 5 persons as Workshop Supervisors namely:- A. Dabeedin, S. D. Mohun, P. Muslayah, A. Islam and S. Seeboruth.
4. The panel also recommended the setting up of a waiting list of 11 applicants for the purpose of filling any other vacancies which may arise in the future. The Management approved the said list. The Applicant was not found suitable to be included in that waiting list.

5. Out of those 11 persons on that waiting list, at least 4 have already been promoted as Workshop Supervisors since then. As soon as that list would have been exhausted, a new exercise will be carried out and Mr Gajadhur will be entitled to apply anew.
6. Contrary to his allegation, most of the persons appointed or waiting to be appointed are not junior to Mr Gajadhur. In any event seniority is not the only determining criterion upon which the appointment should be based. Indeed Regulation 6(1) refers to qualification, merit and seniority.
7. It is submitted that:-
  - (a) The Corporation has carried out the selection exercise in a transparent and fair way.
  - (b) It gave due consideration to qualification, merit and seniority.
  - (c) No valid ground has been put forward by the Applicant to contest the choice of the persons selected by the Corporation.
8. This application ought to be set aside.

In examination in chief, Mr Gajadhur confirms all that he has averred in his written statement.

Furthermore, he states that:-

1. One Mr Gunpath, who was appointed as Workshop Supervisor, was unable to deliver the goods and has been reverted to the grade of mechanic after 8 months in post as Workshop Supervisor.
2. An electrician has been appointed as Workshop Supervisor where there are more mechanical works that are being performed.

The witness feels that he has been victimized.

In cross-examination, he concedes that:-

- (a) There were 62 applications in the year 2001 for the post of Workshop Supervisor and 5 candidates have been appointed.

- (b) After that there was a waiting list of eleven employees and he was not in the said list.
- (c) The interviewing panel takes into consideration qualifications, seniority and merit as criteria.
- (d) He thinks that he deserves better than the others as far as devotion, experience and qualification are concerned.

Mr T Issur, Human Resources Manager of the NTC confirms in examination to the truth and veracity of the Statement of Case of the Respondent.

Moreover, he deponed to the effect that:-

- (a) The 62 Applicants were interviewed on the 26 and the 27 February 2002 and as a result of this exercise, the interviewing panel recommended the appointment of 5 of the applicants to the post of Workshop Supervisor.
- (b) The contention of the Applicant that most of those appointed were junior to him is not correct.
- (c) A waiting list of 11 applicants was also recommended for the purpose of filling of vacancies which may arise in the future. Today 8 of them in the list of the 11 have been promoted and the majority of them – 5 out of 8 – are senior to the Applicant.
- (d) The interviewing exercise was carried out in a transparent way and the panel made recommendations. These recommendations were approved by the Board and the parent Ministry subsequently.
- (e) He moves that this application be set aside.

In cross-examination the witness testifies that:-

1. There are three criteria on which the company bases itself to promote applicants – seniority, qualifications and merit.
2. If it were based only on seniority, the Applicant should have been not only in the waiting list but also in the 5 selected few who were first appointed as Workshop Supervisor.
3. He agrees that the Applicant has many certificates just as other applicants also.

4. All the mechanics in the central workshop are specialized in their respective fields. Just as the Applicant has had his contribution when the company was in a fix at the level of the garage, other mechanics also have had their contributions in other units.
5. Qualification was not the only criterion for promotion. He supposes the panel must have gone on merit.
6. He cannot confirm that Mr Islam, who was appointed, has no qualification at all. He also cannot confirm at this stage that one Mr Gunpath stepped down after some months of his appointment.
7. On 21 March 2005 the Applicant wrote to Management with copy to the Ministry of Land and Transport to express his frustration in relation to the promotion. The Ministry asked for certain information which the Corporation submitted.
8. He denies that at some stage the Applicant's file was tampered with and his certificates were not in that file at the moment of the interview.
9. The post of Workshop Supervisor is open to any tradesman in the workshop – mechanics, electricians and coach builders amongst others. He should have good supervision skill and should know how to conduct the work and he is not the only one in the workshop. The post is not restricted only to mechanics.

In his submission, Mr Ithier concedes that:-

1. As per the statement of Mr Gajadhur, his only grievance is that other people junior to him have been promoted. However, the Respondent has proved that this is not so. In fact most of those promoted were senior to him. Moreover, seniority is not the only criterion. The interviewing panel had to look at the three criteria set out in the Regulation.

2. There is nothing in the Statement of Case of the Applicant which casts aspersion on the panel or on the genuineness of the decisions which they gave. At the last second there has been a desperate attempt to introduce an element of disappearance of certificates but this has never been part of the Applicant's case and has never been part of the testimony for the Tribunal. He asks the Tribunal to discard this allegation.
3. There being no valid ground to contest the decision of the panel, he submits that this case is to be set aside

Mr Ramano, for the applicant, submits as follows:-

- (a) It is agreed between parties that for the purpose of promotion, as per regulation, due consideration is given to seniority, qualification and merit. As to seniority it has been considered by the Respondent that Mr Gajadhur is senior to at least two of the first selected five. He is also senior to 6 of the people in the waiting list of 11.
- (b) In the file there is a set of documents and certificates which give a clear picture of the Applicant who excels at the level of the department of the units.

At some stage Mr Issur said that Mr Gajadhur submitted a list where the company was at a fix and the said employee helped the company.

- (c) As to qualifications, Mr Gajadhur has said before the Tribunal that Mr Dabeedin, Mr Mohun and Mr Muslayah had less qualification than him. One Mr Islam has no qualification at all. The representative of the Employer did not prove the contrary. As regard to one of the promotees Mr Roopchand, who was an electrician, Respondent's witness states he needs not be a mechanic. This means that in a workshop the leader who has no knowledge of mechanic can be fooled by an employee at the lowest rung of the ladder. Another promotee Mr Gunpath went to the post and after 9 months ran away whereas Mr Gajadhur for years was still looking for a promotion.
- (d) He made mention of the Applicant's dexterity, his seniority, his qualification and his loyalty towards his employer.

- (e) To conclude, he invites the Tribunal to consider all these points and the shady aspect of the case in order to do justice to Mr Gajadhur.

After considering the testimonial and documentary evidence adduced, this Tribunal notes and finds that:-

1. There is unanimity between both parties about the criteria taken into consideration in view of the promotion exercise
2. The Respondent has averred that:-
  - (a) The interview exercise was carried out in a transparent way.
  - (b) Advertisement has been made internally and all the 62 Applicants were interviewed.
  - (c) The recommendations of the interviewing panel were approved by the Board and the parental Ministry
  - (d) There is nothing in the Statement of Case of the Applicant which cast aspersion on the persons who sat on the panel or on the genuineness of the decisions which they gave.
3. As regard to qualifications, the Applicant states he has many certificates. The Respondent replies that other candidates also have them.
4. The Applicant also avers that when the company was in a fix at the level of the garage, he helped the company. The Respondent affirms that other mechanics also have had their contributions in other units.

From the Applicant's side it is pointed out that one of the promotees Mr Roopchand was an Electrician. Here the Tribunal observes that as per the averment of the Respondent the competition is opened to any tradesman in the workshop (not restricted only to mechanics). The company has not erred in appointing an electrician. The witness of the Respondent has rightly affirmed that the candidate should have good supervision skill and should know how to conduct the work.

Another contention of the Applicant is that the company was wrong in appointing Mr Gunpath because the latter ran away after being in post for 9 months. This argument does not hold water because the panel



found him suitable at the time of the interview. The Tribunal finds no evidence that the Applicant is better than those appointed. It is our considered view that the panel has given due consideration to qualification, merit and seniority.

We are unable to agree that the company has acted in bad faith or the Applicant has been victimized in the absence of evidence. The applicant's case is based on mere allegations.

In the light of the relevant factors highlighted above, the Tribunal finds that there is no merit in the Applicant's case.

This dispute is set aside.

**(sd) Rashid HOSSEN**  
**Acting President**

**(sd)Binnodh RAMBURN**  
**Member**

**(sd)Masseelamane GOINDEN**  
**Member**

**Date: 4<sup>th</sup> December 2007**