PERMANENT ARBITRATION TRIBUNAL

Award

RN 905

Before:

Rashid Hossen	**-**	**Ag President**
Masseelamanee Goinden	**-**	**Member**
Bhinnod Ramburn	**-**	**Member**

In the matter of:-

Mr Dwejendranath Ramanah

And

Bank of Mauritius

This is a dispute 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 Dwejendranath Ramanah is hereafter referred to as the Disputant and the Bank of Mauritius as the Respondent.

Both parties were assisted by Counsel.

The points in dispute are:-

1. **Whether Dwejendranath Ramanah should be allowed to exercise his right under Section 3(1)(a)iv of the Statutory Bodies Pension Funds Regulation 2000 to retire from the service.**

2. **Whether it was reasonable and fair in the circumstances, for the Bank to withhold authorization to him to retire from its service and hence, unjustifiably, denying him the enjoyment of pensionable benefit.**

In his Statement of Case, the Disputant avers:-

(i) The applicant joined employment of the respondent since 1 October 1980 and had reached the age of 45 on 30 July 2005, (being born on 30.7.60) reckoning more than 24 years service with the bank. He was last holding the post of Dealer drawing a monthly salary of Rs32,400.

(ii) By correspondences dated 13th and 14th July 2005, basing himself on the provisions of the Statutory Bodies Pension Funds Regulations of 2000, the applicant had sought the respondent's authorization to retire from its service with effect from 15 August 2005, as an offer of employment at the Mauritius Commercial Bank Ltd was made to him. The effective date for taking up employment with the Mauritius Commercial Bank was the 15th September, 2005.

(iii) By letter dated 28th July, 2005 the respondent informed the applicant that his request for early retirement at the age of 45 to enable him to take up employment at the Mauritius Commercial Bank was not acceded to.

(iv) On the 4th August, 2005, the applicant reiterated his earlier request with the respondent urging the latter to have a more reasoned approach to his case. The applicant enumerated several points to persuade the bank in his favour.

(v) On the 10th August 2005, the respondent replied that after "careful consideration" of applicant's views as set out in his letter of the 4th August, 2005, the respondent did not accede to the request of the applicant and maintained its decision contained in the respondent's letter of the 28th July, 2005. The applicant was even verbally intimated to resign and take up the new employment.

(vi) By letter dated 11th August, 2005, the applicant insisted from the respondent to give reasons which motivated the respondent to decline his request for early requirement.

(vii) As the time to take employment at the Mauritius Commercial Bank was nearing and in the face of the stand of the bank, the applicant prevailing himself upon the provisions of paragraph 1.6.6 (i) of the Bank's conditions of service applied for leave without pay for a period of one year (letter dated 12th August, 2005 refers).

(viii) By letter dated 19th August, 2005, the respondent turned down applicant's request for leave without pay.

(ix) By letter dated 5th September, 2005, the applicant made a last attempt to have the favour of the respondent but to not avail. The applicant intimated to the respondent that he would be coerced into leaving the respondent's employment as from the 15th of September, 2005, whilst reserving his right to seek appropriate remedy.

(x) On 12th September, 2005, i.e – three days prior to leaving the respondent's employment the applicant declared dispute with the bank.

(xi) The applicant contends that his abilities were not fully utilized at the bank and the scope for his advancement of his career appeared to be limited with the respondent.

(xii) The applicant contends that resignation as such will deprive him of a significant amount of his pensionable benefit, in as much as the Statutory Bodies Pension Funds Act allows only a maximum of 12 months salary (approximately Rs360,000) to be transferred to another pension fund, whereas a retirement will enable the applicant to earn, as from the age of 50 years, a gratuity of more than Rs600,000 and a monthly pension of more than Rs12,000.

(xiii) The applicant contends that the respondent's authorization to retire him from its service will be financially beneficial to him without being detrimental to the respondent. In the event of a retirement the pension fund administered by the SICOM to which the respondent has irrevocably credited its contribution will benefit the applicant.

In the circumstances the applicant humbly prays that the Tribunal be pleased to consider the above points in dispute with the respondent.

In its Statement of Case, the Respondent avers:-

1. By letter dated 13 July 2005, Mr D Ramanah, "the Employee" informed the Bank of Mauritius, "the Bank", that he would like to retire from the service of the Bank with effect from 15 August 2005. The Employee asked that his request be entertained in accordance with Section 3 1 (a) iv and Section 3 (2) of the Statutory Bodies Pension Funds Regulations 2000.

2. By letter dated 14 July 2005, the Employee informed the Bank further that he had been offered employment at the Mauritius Commercial Bank Ltd., in the treasury business department, and would like to take up such employment – hence his request for retirement in terms of paragraph 1.

3. In a further letter dated 21 July 2005, the Employee appealed to the Bank to consider his proposed retirement as normal and exonerate him from liability in respect of the non interest bearing part of his outstanding car loan. He asked to be apprised of outstanding balances for loans he had taken from the Bank.

4. The board of the Bank carefully considered the request of the Employee to be allowed to retire from the services of the Bank, to take up employment at the MCB Ltd., but did not accede to the request of the Employee. The latter was so informed by letter dated 28 July 2005.

5. It is pertinent to note that under the Statutory Bodies Pension Funds Act, Section 14, 5 (a) it is provided with regard to the transfer of accrued pension rights that:-

   (a) "where an officer leaves the service of a statutory body to take up employment in the private sector or to become self employed his portable benefits shall, provided the officer has completed at least 5 years service, be transferred to such superannuation fund as may be established by the Employer who employs him or to such personal pension scheme to which the officer may have adhered to on leaving the statutory body.

   (b) For the purpose of paragraph (a) the portable benefits of the officer shall be computed in such manner as shall be prescribed in respect of officers having completed less than ten years pensionable service.

6. Under the Statutory Bodies Pension Funds Regulations 2000, regulation 3 1 (a) iv, it is provided that….

"A pension benefit shall be granted to an officer <u>with the approval of the statutory body</u> on or after attaining the age of 45 and completing 10 years pensionable service and no pension shall be payable to an officer until he attains the age of 50" (emphasis added).

7. The Bank, as a reasonable Employer weighed carefully the application for early retirement made by the Employee, in line with its employment policy. When the matter was brought before the Board of the Bank, the Bank took into consideration several factors. It was observed that Mr Ramanah was 45 years of age. The Board noted that Mr Ramanah had benefited from specialized training in the services of the Bank and that, as Dealer at the Bank, he was aware of confidential matters pertaining to the Treasury Management of all banks falling under the purview of the Central Bank. The Board decided that it was not in the interest of the Bank to encourage staff in the position of Mr Ramanah to move over to other banks.

8. Also the Bank, as a matter of policy and practice does not retire its officers to enable them to take up employment with other employers. Three officers of the Bank had to resign from their employment to take up other employment – Mr M A B Fakira, Chief Bank Examiner after 19 years service, Mr A K Ramroop, Senior Bank Examiner after 15 years service and Mr I Mungroo, Dealer after 11 years service. It is only in very exceptional circumstances that the Bank approved early retirements. Mr P M Nagawa was retired in the interests of the Bank and Mr H Rathoa who was facing personal problems was allowed to retire on compassionate grounds. In the case of the Employee there were no exceptional circumstances, which justified that his early retirement be approved.

9. Further, the Board considered the effect of the proposed retirement on the pension fund of the bank which was also an important consideration against the approval of the retirement. If the Employee was allowed to retire, he would benefit from a pension at the age of 50. This would constitute a drain on the pension fund of the Bank given that the normal retirement age is 60 years. The deficit created 10 years would have to be

made good by increasing the Employer's rate of annual contribution to the pension fund, which is already high.

10. The Employee's request on the car loan he had taken in October 2004 to purchase a car on which duty had been remitted was also a material consideration for the Bank. The duty component is spread over 4 years. If the Employee was allowed to retire, he would be exonerated from paying the non interest bearing part of the loan, which is the duty free component, but would continue to pay the interest bearing part by instalment after his retirement. There was no reason why the Bank should indirectly subsidize officers who decide to leave their employment at a calculated point in time to take up other employment in the private sector.

11. For the reasons explained in paragraphs 7 to 10, the Bank declined to accede to the request of the Employee for normal retirement. But there was no objection to his accumulated pension benefits being transferred to his new employer.

12. Following the decision of the Bank, the Employee on 4 August 2005 asked for a reconsideration of this case. The Bank maintained its decision and informed the Employee on 10 August 2005. On 11 August 2005, the Employee asked for the reasons why his request had not been granted. Without waiting for the reasons to be communicated to him, on 12 August 2005, the Employee applied for one year leave without pay with effect from 22 August 2005 to take up employment at MCB Ltd. On 19 August 2005 the Bank informed the Employee that his request for leave without pay had not been granted.

13. By letter dated 5 September 2005, the Employee informed the Bank, that --

"*I am leaving the service of the Bank with effect from 15 September 2005. The Secretary has been informed accordingly*".

14. On the same day 5 September 2005, the Employee wrote to the Governor and First Deputy Governor, with copies to the members of the board of the Bank, the Honourable Prime Minister, the Honourable Deputy Prime Minister, the Honourable Minister of Labour and the Honourable Attorney General.

15. It would appear that on 12 September 2005, the Employee declared an Industrial Dispute as per the terms of his letter to the Minister of Labour.

16. On 27 September 2005, the Bank informed the Employee that he had failed to give adequate notice to the Bank in accordance with Section 1.2.16 of the Bank's conditions of service. The Employee was also informed that he had failed to make arrangements to pay his outstanding liabilities to the Bank.

17. By letter dated 26 September 2005, the Employee contended that he never resigned but was constructively put in a situation of resignation. This is denied by the Bank. On 30 September 2005, the Employee enquired about his indebtedness.

18. It is the contention of the Bank that:-

    (i) the Employee resigned from his employment in breach of his conditions of employment without giving proper notice.

    (ii) The Employee's request for a "normal retirement" from the services of the Bank was subject to the approval of the Bank.

    (iii) In the circumstances, the Bank, acting as a reasonable employer, had good and sufficient reasons, not to approve the Employee's request for retirement.

19. The Respondent replies to the Applicant's Statement of Case as follows:-

19.1 The retirement of an employee under Section 3 1 (a) iv of the Statutory Bodies Pension Funds Regulations 2000 is not as of right but subject to the approval of the statutory body concerned.

19.2 The approval of the Bank was not granted to the Employee for good and valid reasons.

19.3 The Employee in blatant disregard of his conditions of employment decided to resign from employment and subsequently, declared an Industrial Dispute.

19.4 The Bank, as a reasonable employer, denies having acted abusively, arbitrarily or unjustifiably. The Employee's position was to coerce the Bank into allowing him to enjoy pension benefits at a higher cost to the Bank at 50 years, to enjoy the duty free component on his car loan whilst taking up employment with a commercial bank for his own advancement. The Bank, conscious of its stand as a responsible employer vis-à-vis all its employees, cannot agree to be over generous to an employee at a premium whilst creating a precedent to its detriment.

20. The Bank takes note of paragraphs (i) to (viii) of the Employee's Statement of Case, denies paragraph (ix) to the effect that the Employee was in anyway coerced into leaving his employment.

21. The Bank denies paragraphs xi, xii and xiii of the Employee's Statement of Case and states that the Employee's accrued pension rights can be transferred according to law, to his new employer.

22. The Bank, in the circumstances, states that the dispute has no substance and moves that it be set aside.

The following evidence has been adduced before the Tribunal:-

- The dispute was declared on the 12th of September 2005.
- The disputant is no more in the employment of the Respondent
- The disputant decided to leave the bank on 15th of September 2005 and he in fact did so without the approval of the employer.
- The disputant agreed that he wrote a letter giving 10 days' notice to leave, although according to him the bank was aware well before of his intention to leave i.e. 13th of July, 2005.
- The bank refuses to give its approval for the employee to leave.
- What the disputant is now contesting is in fact that he was not given approval to retire, although he agreed himself it is a matter for the Board to decide.
- It is not disputed that when the matter was referred to the Tribunal the disputant was no longer an employee of the bank i.e on 24th October, 2005.

During the course of cross-examination of the Applicant, Mr Basset, Counsel for the Respondent while reserving his right for further cross-examination if any made a motion to the effect that the Tribunal cannot proceed in hearing the matter any further. He submitted that the applicant is no more in the employment of the Respondent.

Counsel stressed that the disputant unilaterally decided to put an end to the employer employee relationship because he had decided to go and work elsewhere for a better remuneration. He did not attach any condition to his leaving his employment and the employer was simply put before a *fait accompli*. Counsel further submitted that the bank was not bound in accordance with the law to approve the retirement.

Mr Ramchurn, Counsel for the disputant submitted that the employer-employee relationship existed when the employee declared the dispute. He further addressed the Tribunal on the issue of termination of employment. His point is that if the dispute arises in relation to termination of employment, the Tribunal does have jurisdiction.

<u>Tribunal's considerations</u>

It cannot be a matter of dispute that the Central Bank's approval is required before an officer is released. **Regulation 3 1(a) (iv) of the Statutory Bodies Pension Funds Regulations provides:-**

" A pension benefit shall be granted to an officer with the approval of the statutory body on or after attaining the age of 45 and completing 10 years pensionable service and no pension shall be payable to an officer until he attains the age of 50".

We need to address our mind on the issue whether, having the power to decide on the retirement of the officer, it was exercised in a fair manner. Indeed, the disputant could not successfully challenge the following:-

(a) that no careful consideration was given to his application, taking into account:-

(i) his age,

(ii) he had benefited from specialized training in the services of the Central Bank,

(iii) as a Dealer at the Bank, he was aware of confidential matters pertaining to the Treasury Management of all banks falling under the purview of the Central Bank.

(iv) his request on the car loan he had taken in October 2004 to purchase a car on which duty has been remitted. Were he to allow to retire, he would be exonerated from paying the non-interest bearing part of the loan, which is the duty free component. Thus, there was no reason why the Bank should indirectly subsidize officers who decide to leave their employment at a calculated point in time to take up other employment in the private sector.

(b) that it was not in the interest of the Bank to encourage staff in the position of the disputant to move over to other Banks.

(c) it is a matter of policy and practice that the Central Bank does not retire its officers to enable them to take up employment with other employers.

(d) an early retirement constitutes a drain on the pension fund of the Bank given that the normal retirement age is 60 years. The deficit created would have to be made good by increasing the Employer's rate of annual contribution to the pension fund, which is already high.

In the circumstances, we consider that the Central Bank cannot be blamed for having exercised an obligation imposed by a statute, i.e its approval to release and this without evidence of unfairness. In other words, it is our considered view that the Disputant's right is subject to a fiat which has not been unjustifiably held.

This being the case, we do not propose to deal with the issue of the employee who is no more in the employment of the Central Bank.

The dispute is therefore set aside.

Rashid HOSSEN
Acting President

Binnodh RAMBURN
Member

Masseelamanee GOINDEN
Member

Date: 10th December 2007