

# PERMANENT ARBITRATION TRIBUNAL

## AWARD

**RN 913**

**Before:**

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

**In the matter of:-**

**Mr Indradeo Rampadaruth**

**And**

**Mauritours 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.

The Terms of Reference read:-

**“Whether the salary of Mr Indradeo Rampadaruth, as planning officer, should be increased from Rs 8,500 per month to Rs 12,000 with effect from February 2005 and to Rs 12,500 as from July 2005, so as to be in line with the salary of Mr Rohee Nair, also a Planning Officer, or otherwise.”**

In its Statement of case, the Applicant avers that:-

1. He is employed at Mauritours Ltd as Planning Officer since 1997 and is actually earning a monthly basic salary of Rs 8900 together with a fixed overtime allowance of Rs 1000.
2. In the year 2001, Mr Rohee Nair joined the Company as Transport Officer in the Planning Department and he was promoted to the post of Planning Officer after one year's service. After the promotion of Mr Nair, the Head of the relevant Department deputed him (the Applicant) to supervise the work of Mr Nair. The latter was new to the job and this lasted for one year. The supervisory role, the Applicant believes, was conferred to him on the basis of his seniority in the Planning Department.
3. Since March 2005, Mr Nair, who is junior to him, has been paid a monthly basic salary of Rs 12000 and a fixed overtime allowance of Rs 1000 and this was never disclosed to anybody in the Department. Being aggrieved, he made representations to the Managing Director for an adjustment in his salary so that he be placed at the same level as his colleague, Mr Nair. The Managing

Director referred the matter to the Human Resources Department for appropriate action but up to date he has not been informed of the outcome of his request. The Human Resources Manager was unhappy by the fact that he made representations directly to the Managing Director to whom he showed the pay slip of Mr Nair and represented his anger at him in presence of other officers including the Head of his Department.

4. At one point in time the Company introduced a software system in all its Department and each Head of Section was conferred with the task of explaining to their relevant officers how to operate the new system. The Head of Section, Mr Olivier Huffoye, did successfully show them how to operate the system. When Mr Huffoye left, he was replaced by Mr Sunil Cheekoree who adopted a new approach of management whereby the responsibilities in their Department were divided so that each of the four officers was conferred a particular responsibility. Thus Mr Nair was conferred the responsibility of operating the software, which task could have been assigned to anyone of them. The Company cannot rely on this to justify why Mr Nair is being paid a basic salary of Rs 12000 in as much as any one of them could well perform the task.
5. It is his case that the disparity which exists between his salary and that of Mr Nair is unjustified and appropriate adjustment be made by the Company to bring his salary on the same level as that of Mr Nair.

The Respondent in its Statement of Case avers that:-

1. As at present Mr Rampadaruth earns Rs 9,9000 monthly and Mr Nair earns Rs 13,500 monthly.
2. The Applicant joined Mauritours Ltd on 1 September 1997 prior to Mr Nair who joined the Company on 1 March 2001.
3. At the time Mr Nair joined the Company, he was earning less than Mr Rampadaruth up to February 2003 when both reached the same grade and were earning equal amounts.
4. The situation of parity remained unchanged up to February 2005 when the salary of Mr Nair was increased to Rs 13,500. There are two reasons for this:
  - (a) The latest performance appraisal of their immediate superior indicates that Mr Nair is a more highly rated employee in terms of productivity, efficiency and team work than Mr Rampadaruth.
  - (b) Mr Nair has been assigned very specific duties with regard to the newly introduced destination management system commonly called CEGI and Mr Rampadaruth has not been chosen to perform this task.
5. No other Planning Officer has complained of this as they are all aware of the specific duties assigned to Mr Nair.

The Applicant, in examination in chief, confirms all that he had averred in his Statement of Case.

Moreover, he affirms that:-

- (a) Performance appraisal is made every year during the month of July. However Mr Nair has been given a substantial increase in salary before July.
- (b) The CEGI system is no longer being used at Mauritours.
- (c) The other planning officers are junior to Mr Nair and this is why they have not complained.
- (d) As regard performance appraisal he has on various occasions reported in writing to the Company of errors that were being committed by Mr Nair in the performance of his duties.
- (e) After his meeting with the Managing Director, Mr Stephan Leal, who was shocked to see the increase in salary given to Mr Nair, the Human Resource Manager called him at his office in presence of Mr Cheekoory and told him angrily that only the competent ones would be promoted..

In cross-examination the witness affirms that:-

1. He is still a Planning Officer as at to-day.
2. He has not made any complaint about the fact that he has not been promoted. His only complaint was that Mr Nair, being junior to him, was earning more than him.
3. He did not complain that Mr Patrice Leal was made Deputy Managing Director without going through all the hierarchy two years ago because this is not his level and not his department.
4. His Head of Department, Mr Sunil Cheekoory joined Mauritours as a cleaner 20 years back. Then after 3 or 4 years he was appointed Planning Officer.
5. When he (the Applicant) joined Mauritours, Mr Sunil Cheekoory was a Planning Officer.

6. Mr Olivier Huffoye was Head of the Planning Department since the day of his appointment. He joined the Company directly as Planning Manager.
7. Before Mr Huffoye there was Mr Richard Li (Planning Manager) and Mr Dasa was the Assistant of Mr Li. When Mr Dasa left or shifted to another Department Mr Cheekoory became his Assistant, then Planning Controller. When Mr Li left the Company, he was replaced by Mr Huffoye and Mr Cheekoory became his Assistant. Afterwards Mr Huffoye left and Mr Cheekoory was reporting to the Operation Manager, Mr Seegobin.
8. The CEGI system was the name given to the software known as Travelsoft. It was when Travelsoft was integrated into the system of Mauritours that this whole business of CEGI started. The CEGI help desk was created on 8 November 2004 following a crash course of one week (from 31 October to 5 November 2004) and 3 employees were appointed to be members of the CEGI help desk namely Melodie Suntah, Sendy Nagalingum and Rohee Nair. Nobody was aware of the appointment of Mr Nair. These three persons were given specific duties within the CEGI help desk because that was the nerve system of Mauritours. Mauritours being a tour operator, the Travelsoft within the Company was the central nervous system of the reservations.
9. The CEGI help desk was headed by Mr Sendy Nagalingum, an Analyst Programmer. The 2 departments that are more concerned with Travelsoft are the Commercial Departments in the Inbound Operations of Mauritours and the Planning Department which is the Transport Department of Mauritours.
10. In February 2005 Mr Nair's salary was increased from Rs 8500 to Rs 12000 and this is the crux of his complaint. Mr Jeetoo, the Human Resources Manager, told him that Mr Nair's salary was increased because he was on the CEGI help desk and he was the more competent Planning Officer to do this job.

11. Mr Sunil Cheekoory has been nominated as Head of Department because of his seniority and his competence.
12. He does not agree that Mr Nair is more competent than him.
13. He has never seen or been made aware of a mail regarding the Travelsoft sent by Mr Nagalingum in November 2004 to all Head of Department. (Document C).
14. He does not know that following the appraisal of July 2004 that in October/November 2004 there was a necessity to appoint someone at the Planning Department on the CEGI help desk and that Mr Nair was appointed because at that appraisal he was more highly rated than him.
15. He does not agree that the salary of Mr Nair was increased in order to remunerate him for the extra work he was performing at the CEGI desk.
16. Mr Cheekoory sent a memo to the Head Office saying that whenever he is out of office, he (Mr Rampadaruth) will be responsible for the Department.

In examination, Mr Javed Jeetoo, Human Resource Manager, testifies that:-

1. He confirms a mail (Document C) was sent to all Heads of Department at the relevant time.
2. When Mr Rampadaruth came to see him following his complaint to the Managing Director, he explained to him in French that the reasons for the increase in salary given to Mr Nair was first of all the responsibilities conferred to the latter and also in relation to the competence and performance of the employee. He did not utter the words in the manner the Applicant has deponed to the effect that only competent ones get promoted.
3. Mr Nair was chosen because of his competence. He was more IT literate, much more knowledgeable than any other employee in the Company with regard to the software

system. Mr Sedy Nagalingum, the IT person who headed the CEGI desk chose Mr Nair instead of Mr Rampadaruth.

4. Increment is given to an employee as a result of his good performance and if the employee has been given additional responsibilities during the year.
5. The difference in salary was due to the fact that Mr Nair was dealing with another task at the same time .
6. As regard the CEGI desk, the system is still there and is working only for the reservation and commercial department and not for the Planning Department. There is a new system at the Planning Department which is called the Maurisoft. The Planning Department has another software system which is on "interface" with the previous one.
7. Mr Sikanto has arrived in November 2006 and at the same time there has been a change of Maurisoft. Since then and till today there has not been any change at the Planning Department. However, there has been changes in terms of responsibilities conferred to the employees. For example Mr Nair has been given much more responsibilities in the day to day matters of the Planning Department. The Company has planned to appoint Mr Nair Planning Controller, as an Assistant to the Head of Department.
8. Performance appraisal of a department is made by the Head of that Department and this appraisal is sent to the Human Resources Department for review. Regarding the performance of Mr Nair, he is a more consistent employee, positive attitude and in terms of efficiency higher than the other Planning Officers.

The witness, in cross-examination, testifies that:-

1. There is a document to show that Mr Nair was more performing than the Applicant.



2. As regard how performance appraisal is done, the Head of Department has a meeting with the employee. Feedback is given directly to the employee, recorded on a questionnaire and given to the Human Resources Department. When the Head of the Department is discussing with an employee, the employee is requested to fill certain parts of the form and this is the basis on which the result will be determined. No one is given a copy and the employee signs the form.
3. He is aware that the Applicant has made averments against Mr Nair regarding errors committed by the latter in the performance of his duties
4. Before the CEGI system was introduced, there was other software system at Mauritours. He does not agree that all the officers were using it and whether all were IT literate. All Officers were not given to have training on the CEGI system. It is a question of cost and it is to what is best for the organisation. The system concerns the Planning Department, Commercial, Reservations and there was only one employee from each Department. At one point in time Mr Cheekoory divided his section into 4 different fields and Management and the Head of Department gave special responsibilities to an officer in each field.
5. It is impossible that Mr Stephane Leal was not aware that Mr Nair was being given a higher salary.
6. He remembers that at the last sitting his Counsel made a statement to the effect than in 3 weeks time there will be a restructuration and that Management will call Mr Rampadaruth to give him other responsibilities and probably that will put an end to this dispute. This has not been done in the process of restructuring the Department; there is a new Head of Department who came in November of last year, who has performed an audit, an assessment of resources, including human resources and his proposals among others are in the organization chart.

7. Mr Nair is still Planning Officer in the Planning Department and is getting higher salary than others.
8. The CEGI system is no longer in existence at the Planning Department since October 2006. There is a new system specifically made for the Planning Department.
9. The Company does not consider seniority, but the performance of the employee for upgrading.

Mr Nazroo, for the Respondent, submitted to the effect that:-

1. Whilst the case was before the Tribunal, there were changes of circumstances in the company and Mr Nair left. After that the General Manager also left. From there on, there was an internal restructuration that was going on. Before any decision could be taken all the departments had to be re-assessed and restructured before a final new responsibility could be given to Mr Rampadaruth. This has not been done so far because it is a big company and the time it takes to get anybody round the table is longer than that which have been predicted.
2. As matters stand today, the salary of Mr Rampadaruth amounts, as to date, to a total package of Rs 14,500- basic being Rs 11,000. Mr Nair who is no longer in the company was having a total package of Rs 13,700 – much less than that Mr Rampadaruth is now getting since April.
3. He asked:-
  - (a) Whether the Tribunal has jurisdiction to hear and determine arrears issue and
  - (b) Whether the re-alignment of salary is still a live issue since there has been a change of circumstance with the departure of Mr Nair.

In his submission, Mr Kistnen points out that:

1. It is wrong to say that Mr Nair was at the top of the relevant department of Mr Rampadaruth. The case of the Applicant is that he and Mr Nair, both were doing the same job in the same department and Mr Nair being his junior, who joined the company well after was earning more than him in terms of salary. He wants his salary to be re-aligned to that of Mr Nair and whether the latter is here or not makes no difference at all.
2. The Tribunal will have to determine whether there was a disparity between their respective salaries. The Tribunal is also called to decide that the salary of the Applicant be re-aligned from February 2005 and from July 2005. Therefore there is also the issue of arrears which should amount to some Rs 114,500.
3. It is noted that each time the Employer comes to this Tribunal it mentions restructure but this has not been done yet. There is a letter which has been adduced before this tribunal to say that they were going to do it by July at latest. However, Mr Jeetoo, who represents the company has already been promoted and Mr Rampadaruth has been left outside.
4. As regard the issue of arrears, the Tribunal has the jurisdiction for determination; otherwise the relevant authority would not have sent this case to the Tribunal.

In reply, Mr Nazroo states that the Tribunal may well have jurisdiction about re-aligning the salary of Mr Rampadaruth with that of Mr Nair but whether he should be paid arrears is a different matter. The Tribunal will have to determine whether it has jurisdiction to award arrears to the Applicant.

The Tribunal views that the arrears issue is part of the Terms of Reference sent to it and we are at difficulties to understand the concern of Counsel on the point of jurisdiction. **Section 85(1)(b)(ii) of the Industrial Relations Act 1973**, as amended brings comfort to our view that the Tribunal has power to deliver awards with retrospective effect.

**“Effects of Awards**

- (1) An award shall be published in the *Gazette*, and shall -
  - (a) state the parties, the employees and the employers to whom each of the provisions of the award shall apply;
  - (b) take effect –
    - (i) on the date of its publication in the *Gazette*; or
    - (ii) if it is expressed to have retrospective effect, on the date specified in the award; and
  - (c) be binding on all the parties to whom the award applies for such period not exceeding 2 years as the Tribunal may determine.”

That Mr Nair has now left the company cannot put an end to the prejudice caused to the Applicant. Mr Rampadaruth is still in the employment of the company and is the disputant in the present matter. Also the fact that others did not complain against the promotion of Mr Nair is immaterial inasmuch as they were all junior to him.

The Tribunal finds that Mr Rampadaruth has not had a fair deal with his Employer and was left in the lurch.

Mr Rampadaruth joined Mauritours in the year 1997 as a Planning Officer and is still occupying the same post. One of his junior Mr Nair who joined the Company in the year 2001, four years after him, as Transport Officer ( a lower grade under that of Planning Officer) was perceiving a higher salary than him since February 2005 although both were in the same grade as Planning Officer.

We fail to understand how Mr Nair joining the Company in 2001 as Transport Officer can come at par in salary in February 2003 with the Applicant despite the fact that he (Mr Nair) was promoted to the grade of Planning Officer only one year after. This parity in salary has not been satisfactorily explained by the Respondent.

The Employer has put forward two reasons as to why Mr Nair (Planning Officer) is receiving a higher basic salary than Mr Rampadaruth (also Planning Officer and senior to Mr Nair). They are (a) the performance appraisal which, as per the Employer, indicates that Mr Nair is a more highly rated employee in terms of productivity, efficiency and team work than Mr Rampadaruth and (b) the new responsibility given to Mr Nair with regard to the CEGI (the newly destination management system).

The Tribunal is unable to agree with the explanation given by the Employer. The way the performance appraisal is effected does not convince us and certainly lacks transparency. We do not see any reproach made to Applicant and any chance for him to explain and if need be, to improve. It appears to be a one-man show conducted by the immediate superior of the employee. In the case of Mr Rampadaruth, it was done by Mr Cheekoory. As regard Mr Nair, the Applicant contends that this task could have been assigned to other colleagues in the Planning Unit. He states that the Head of Section before Mr Cheekory, namely Mr Huffoye did successfully showed them how to operate the system. The Tribunal views that opportunity to operate this system could have been given to anybody and in particular to Mr Rampadaruth in as much he is the most Senior Planning Officer.

The capacity of Mr Rampadaruth cannot be overlooked if we bear in mind the following:-

- (a) He was assigned the responsibility for the Planning Department in the absence of his Head of Department, Mr Cheekoory (Document B of 23 March 2004).
- (b) He has averred that he was deputed to supervise the work of Mr Nair when the latter was promoted as Planning Officer and he believes that this responsibility was conferred to him on the basis of his seniority. This averment has not been contested by the Respondent.
- (c) Management is proposing to appoint a Planning Co-ordinator who will be supervising and training Planning Officers among others in the reorganization of the company. They believe that Mr Rampadaruth could fit in this role. Had the Applicant not been competent, Management would not have assigned him all the above responsibilities. Mr Rampadaruth feels that his frustration is justified when he has also witnessed that:-
  - (i) Mr Nair joining the Company after him in a lower capacity was on top of him as far as basic salary is concerned.
  - (ii) Mr Cheekoory who at a time was a cleaner in the Company became his Head of Department.
  - (iii) Mr Jeetoo, who represents the Company before this Tribunal, has already been promoted in the light of the "restructure" while he (the Applicant) has been left outside.

It was unfair on the part of the Employer to allow work of a supervisory nature to the Applicant over a new entrant and to promote the latter over the former without considering any shortcomings on the part of the Applicant and giving him the chance to rebut, if any.

Indeed, an analysis of the whole evidence leads to the inevitable conclusion that the Employer may have had a good reason to allow Mr Nair the benefit of an accelerated promotion, but it was certainly done in a way that caused prejudice and unfairness to the Applicant.

For the reasons stated above, this Tribunal finds no other alternative than to accede to the claim of the Applicant.

The Tribunal awards that the salary of Mr Indradeo Rampadaruth, as Planning Officer, should be increased from Rs 8500 per month to Rs 12,000 with effect from February 2005 and to Rs 12,500 as from July 2005, so as to be in line with the salary of Mr Rohee Nair, then a Planning Officer, on a personal to bearer basis.

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

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

**(sd) Maseelamane GOINDEN**  
**Member**

**Date: 30<sup>th</sup> November 2007**