

PERMANENT ARBITRATION TRIBUNAL

AWARD

RN 778

Before:-

Rashid Hossen	-	Ag President
Binnodh Ramburn	-	Member
Rajendranath Sumputh	-	Member

In the matter of:-

Mr Lutchumanen VEERAMOOTOO

and

Technical School Management Trust Fund

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. Veeramootoo is hereafter referred to as the Applicant and the Technical School Management Trust Fund, as the Respondent.

Both parties were represented by respective Counsel.

The points in dispute are:-

- (1) *Whether Mr Lutchumanen Veeramootoo should be appointed at the Institut Superieur de Technologie, or otherwise.*
- (2) *Whether disputant should not be paid an allowance due as prescribed by law or otherwise.*

On the 22nd of September 2006, Counsel representing the applicant avers that dispute No. 2 has been settled, as his client has already accepted an allowance and same has already been paid to him.

Dispute No. 2 is therefore set aside.

A literal interpretation to be given to the Terms of Reference sent by the said Ministry with respect to Dispute No 1 is that it is vague and meaningless. However, when going through Applicant's Statement of Case, we find that his appointment is in relation to the post of Manager. We are prepared to allow the benefit of the doubt in favour of the Ministry. The word "Manager" in the Terms of Reference appears to be an inadvertent lapsus. We therefore construe the point in dispute to mean **"whether Mr Luchumanen Veeramootoo should be appointed as Manager at the L'Institut Superieur de Technologies or otherwise."** We are comforted in this by the following averment made in Applicant's Statement of Case and which is not disputed by the Respondent: *"There is an obvious omission in point 1 of the above terms of reference which should have read "Whether Mr Luchmen Veeramootoo should be appointed Manager at the Institut Superieur de Technologie or otherwise."*

In his statement of case, the applicant avers that:

- Following a Scholarship offered by the Public Service Commission, he followed a course in France in 1979.
- After completing a two-year course, he was awarded the "Certificat d'Aptitude a l'Enseignement dans les Lycees d'Enseignante Professionels (CAELEP)" and on his

- return was appointed as Education Officer Grade A, in the Ministry of Education on the 30th of September 1982, posted at the Polytechnique Sir Guy Forget at Flacq.
- In 1992, Applicant was appointed as Education Officer Grade A with top salary at the Technical School Management Trust Fund.
- On the 2nd of November 1995, Applicant was appointed/promoted as "Assistant Manager" and was assigned the responsibility of setting up the project:-
"Institut Polytechnique de Rose-Hill at Camp Levieux" now known as « Institut Supérieurs des Technologie » (IST).
- The Project (IST) started on the 28th of November 1995 and the binding was handed on the 17th of October 1997.
- The applicant avers that he acted as Manager of "IST" and was responsible for its day-to-day running.
- He was directly accountable to the Director of the Technical School Management Trust Fund.
- Following a Press Communiqué on the 29th of September 1998, the applicant applied for the post of Manager.
- Applicant was not convened for the interview held on the 11th of March 1999, he was denied the right and opportunity to appear at an interview for a promotional post.
- Applicant's appeal to the Chairman of the Technical School Management Trust Fund on the 30th March 1999 and a reminder sent on the 28th of April 1999.
- Applicant's appeal was followed with a claim for acting allowance on the 17th of March 1999.
- There was no response from the Respondent.
- Applicant legitimately expected that all the efforts he had put in, would have been justly recognized and that he would be considered for appointment as Manager.
- Applicant has been closely involved in the establishment and setting up of the "IST", he has set up the administration, managed the institution and has been instructed to perform and shoulder all the duties and responsibilities that should normally have devolved upon the Manager. He has never been unfavourably reported upon the performance of his duties. In fact he had left no stone unturned in his endeavour to give the "IST" a promising start.

- Applicant possesses qualifications which were deemed to be equivalent to the prescribed qualifications for the post of Education Officer Grade A.

In its Statement of Case, the Respondent avers:-

- The claim by applicant for appointment as Manager at the Institut Supérieure des Technologies stands guided on the fact that applicant does not hold the qualification prescribed in the scheme of service for the position and furthermore the qualification held by him has not been positively assessed by the National Equivalence Council or any recognized accreditation authority.

During his examination by Counsel, the applicant avers that his application for the post of Manager was not considered on the ground that he was not qualified and that he was told by the Trust Fund that he is not a degree holder. He was appointed as Education Officer Grade A in 1982 and only degree holders are appointed as such. He was called upon to take charge of the Lycée Polytechnique Guy Forget on several occasions – on 18th April 2003, 9th November 2005 and 17th March 2006 and on each occasion, he was paid an allowance.

During cross-examination, the applicant avers that he was always under the impression that he is holder of a degree – “a licence” that is “a degree” and was always under the belief that his qualification was a degree.

The Respondent’s representative avers that the post of Manager is not a promotional post from that of Assistant Manager and appointment is made in an open competition basis. He is not aware that Applicant’s case was not considered as he is not a degree holder.

Para 13.13 to 13.16 of the PRB Report 2003 read as follows:

“Alternative and Equivalent Qualifications

13.13 We have various entry grades which require a degree and appointment thereto have been made with qualifications which have been considered as alternative or deemed to be equivalent to those prescribed in the schemes of service.

Recommendation 6

- 13.14 We recommend that alternatives to a prescribed qualification should as far as possible be of the same level and in the same subjects that are required for the post.
- 13.15 We also recommend that where a post SC degree has been deemed to be equivalent to a post "A" Level Diploma in a scheme of service, candidates who hold a degree but lack part or the whole of the SC qualification should also be considered for appointment in scarcity areas e.g. Oriental Language Teachers.
- 13.16 We further recommend that when a candidate has been recruited on the basis of qualifications deemed to be equivalent to the prescribed qualifications in the scheme of service, this equivalence should continue to be considered for promotion posts as if the incumbent possesses the required qualifications."

In its advice in the context of Recommendation at paragraph 13.16 of the PRB report 2003, the Ministry of Civil Service and Administrative Reforms advised the Technical School Management Trust Fund as follows:

- The Recommendation made at paragraph 13.13 should be read in conjunction with the recommendation made at paragraph 13.15 of the PRB report 2003. The provision made therein relates to "promotion post's" i.e promotion posts in the same hierarchy (grade to grade promotion).
- In accordance with the Scheme of Service of Manager, Technical School Trust Fund, appointment thereto is made by open competition from among the general public possessing the required qualifications and therefore does not fall to be dealt with provisions of recommendations 13.16 of the PRB – Report 2003.

In the "Notice of Vacancies" for the post of Manager dated the 29th of September 1998- the qualification required is as follows:-

- (1) Cambridge Higher School Certificate or Equivalent
- (2) A degree in any Engineering or Science subject from a recognized institution
- (3) At least three years experience in a supervisory capacity in an industrial cum Educational Institution.

Or

An equivalent qualification acceptable to the Board.

- Only the best qualified candidate will be called for interview
- The Applicant was not called for interview which led to the present dispute.

The Tribunal after considering all documents and submissions, reaches the conclusion that the applicant was always under the impression that he is holder of a degree and should have been considered for the promotional post of "Manager" being an "Assistant Manager". This is a direct entry grade and not a promotional post.

We consider that the PRB Report 2003, paragraph 13.16 was fully applied in the applicant's case. He was appointed Education Officer Grade A in 1982, re-appointed by the Technical School Management Trust Fund in 1992 on top salary, promoted to "Assistant Manager" in 1995, and he was not denied the right to apply for the post of Deputy Rector in 1992. In 2003 he was called for interview for the post of "Departmental Head".

Whenever applicant was called to shoulder higher responsibilities, his allowances were duly paid to him.

We refer here to the Tribunal's Award in "E. César And C.W.A. RN 785 of 2005":

“Mr César’s short testimony is to the effect that the extra increment would have an impact on his pension and lump sum. He underwent two interims within six months when he should have been placed on a waiting list.

The representative of the CWA maintained under oath that the procedures of appointment had been followed in all its minute detail.

The Award of the Permanent Arbitration Tribunal in the case of **D. Goburdhun and Irrigation Authority, RN 483 of 1998** shows that the Tribunal reconciled with the view that a substantive appointment does not necessarily have to be backdated from the date of actingship in such grade/post even where the appointee has been fulfilling such actingship over a considerable length of time. “The Tribunal is satisfied that there is no established practice in the Civil Service that a substantive appointment (to a post or grade) is backdated with effect from the date of actingship in such grade/post especially when the appointee had been filling such actingship over a considerable length of time and is subsequently appointed to occupy the post in which he was previously acting” It is worth stressing that for the sake of good industrial relations, vacancies should be filled in as soon possible and period of actingship should not be made to last for more than is necessary.

The Tribunal holds that, subject to an abuse of powers on the part of management (**Mrs D.C.Y.P. and Sun Casinos RN 202 1988**). , matters regarding appointment and promotion of employees are essentially within the province of management. (**M. Pottier and Ireland Blyth Ltd RN 279 of 1994, A. Ayrga and Tea Board RN 575 of 1998**).

However sympathetic a view one wishes to take regarding Mr César’s claim, the moreso as it appears to be his last wish before embarking on retirement, there must be some basis upon which the Tribunal can hold to, lest it may create a bad precedent. However small and petty his request may appear to be, we cannot intervene in the absence of evidence in support of his claim. The Tribunal is not here to grant by the mere asking. A claim must be justified”.

The Tribunal finds no merit in applicant's claim.

The dispute is accordingly set aside.

(sd)Rashid Hossen

Ag President

(sd)Binnodh Ramburn

Member

(sd)Rajendranath Sumputh

Member

Date: 17/05/07