

PERMANENT ARBITRATION TRIBUNAL

AWARD

RN 872

Before:

| | | |
|----------------------|---|--------------|
| Rashid HOSSEN | - | Ag President |
| Binnodh RAMBURN | - | Member |
| Masseelamane Goinden | - | Member |

In the matter of:

Mr R. H. Toofany

And

Central Water Authority

The present dispute has been referred for Compulsory Arbitration by the Minister responsible for Labour, Industrial Relations and Employment in accordance with **section 82 (1) (f) of the Industrial Relations Act 1973** as amended.

Mr. M. Ajodah, of Counsel, appears for the Applicant. Mr. V. Ramchurn, of Counsel, appears for the Respondent.

The points in dispute are:-

1. *"Whether the post of Secretary should have been advertised internally first as spelt out in paragraph 1.4 of the Selection and Recruitment Procedure of the Central Water Authority, or otherwise."*

2. *“Whether Mr R. Toofany should have been called for interview for the post of Secretary when same was advertised on 26 July 2004, or otherwise.”*

In his Statement of Case, the Applicant avers that:-

1. On 26th July 2004, the CWA advertised the post of Secretary in the local newspapers. Prior to such external advertisement, no internal advertisement was carried out by the CWA.
2. This open advertisement is in contradiction with the Procedural Agreement existing at the CWA, more specifically sections 1.3 and 1.4 entitled “Advertisement” and which reads as follows:-
 - 1.3 “The Authority shall advertise posts in the prescribed form which shall include salary, qualification, full statement of duties of the post. The advertisement shall be posted in all CWA Notice Boards and shall be on an island wide basis. The delay for submission of applications in respect of vacancies to be filled by internal candidates shall be three weeks from the day of advertisement.”
 - 1.4 “Where the Authority is satisfied that no suitable internal candidate with the requisite qualification is available, it may decide to advertise the post within Mauritius or outside Mauritius and arrange for such recruitment to be carried out.

The qualifications required from candidates were:-

- (i) A degree in either Administration, Management, Law, Science or Associate/Member of the Chartered Institute of Secretaries or any other equivalent qualification acceptable to the Central Water Authority and a minimum of 5 years proven experience in a responsible Administrative or Executive position;

- (ii) Proven experience as Secretary to Boards/Committees will be an advantage.
- 3. Being given that there were no internal advertisements, Mr Toofany had no alternative than to apply to the post further to the external advertisement.
- 4. He learned that interviews had been called for but he had not been short-listed for interview and immediately went to meet Mr Nundoosing, Human Resource Manager of the CWA to inquire. Mr Nundoosing told Mr Toofany that he would not be called for an interview, as according to Mr Nundoosing, he did not satisfy requirement (ii) of the advertisement.
- 5. The applicant's case is that he did satisfy requirement (ii) of the advertisement and that the CWA was:
 - (a) wrong in not having advertised the post of Secretary internally first as spelt out in paragraph 1.4 of the Selection and Recruitment Procedure of the CWA; and
 - (b) wrong in not having called him for interview for the post of Secretary when same was advertised on 26 July 2004 and wrong in not considering him for the appointment.
- 6. Mr Toofany joined the CWA as Clerk in 1975 and was promoted Senior Clerk in 1979 and Principal Clerk in 1984. The post of Principal Clerk at the CWA is comparable with the post of Higher Executive Officer in the Civil Service.
- 7. Between his appointment as Principal Clerk in 1984 up till 1996, Mr Toofany was called upon to replace the Secretary during the absence of the latter and was paid the full responsibility allowance payable to the

Secretary. A full allowance is only paid when the person replacing is considered to be fully qualified for the post. If the person replacing is not qualified, he will only be paid two thirds of the allowance payable to the holder of the post.

8. In 1996 Mr Toofany was appointed Accounts Officer. This post benefits from the same salary scale as Principal Clerk.
9. In 1999 he was promoted as Senior Accounts Officer, which post he still holds to date. The post of Senior Accounts Officer at the CWA is comparable with the post of Senior Finance Officer in the Civil Service.

According to the applicant, in the light of the above, he satisfies the requirement (ii) of the advertisement above. Mr Toofany has annexed a number of documents to support his case.

The Respondent avers the following in its Statement of Case:-

1. During the period Mr. K. Jeerooburkhan, former Secretary, was on pre-retirement leave and after his retirement from the service on 16 May 2004, Mr D. Sowdagur, Manager (Commercial Services), who prior to his present appointment was holding the post of Secretary, was called upon to cumulate the function of Secretary.
2. On 26 July 2004, the post was advertised and both internal and external candidates, including Mr Toofany put in applications. Based on the qualifications requirement of the post of Secretary and the relevant note included in the advertisement to the effect that "only the best qualified candidates will be called for interview", Mr Toofany was not convened for the interview exercise held on 23 September 2004.
3. The vacant post of Secretary was filled with effect from 18 October 2004.

Respondent has annexed 2 documents in its Statement of Case.

Mr Toofany examined by Mr Ajodah, of Counsel, swore to the correctness of his Statement of Case and the documents attached. The applicant also confirmed that according to the Procedural Agreement which exists between the Union and the Authority, nowhere mention is made that the best qualified candidates are called for interviews. Cross-examined by Mr Ramchurn, of Counsel, the applicant agreed that he had noticed in the open advertisement relating to the post that only the best qualified candidates would be called for interview.

Mr G. Tuyau, Personnel Officer, of the CWA swore to the correctness of the Statement of Case and documents annexed. The witness under cross-examination conceded that only the best candidate would be called is not 'explicitly' found in the Procedural Agreement.

To a question put by the Tribunal, Mr Tuyau agreed that the post of Secretary should have been advertised internally but such was not the case.

After going through all the documentary and testimonial evidence, the Tribunal finds that the post of Secretary was advertised on 26 July 2004 in the local newspaper after it became vacant due to the retirement of the former Secretary, Mr K. Jeerooburkhan. The Tribunal views this operation as a 'unilateral' decision because it is in opposition with the Procedural Agreement between the Union and the employees and the CWA as provided in paragraphs 1.1 and 1.4. The Procedural Agreement has not been respected. Even Mr Tuyau, the representative of the CWA agreed that the post of Secretary should have been advertised internally in answer to questions put by the Tribunal.

We find that the CWA has not been in line with the Procedural Agreement referred to earlier in not advertising the post of Secretary internally first as spelt out in paragraph 1.4 of the Selection and Recruitment Procedure. This has certainly disturbed good industrial relations. We conveniently refer Management to the following paragraphs of the **Code of Practice** annexed to the **Industrial Relations Act 1973**, as amended:

Third Schedule
Part II – RESPONSIBILITIES
MANAGEMENT

3. "While good industrial relations are a joint responsibility, the primary responsibility for their promotion rests with management."

RECRUITMENT AND SELECTION

23 In recruiting and selecting employees management shall –

- (a) decide the qualifications and experience needed by applicants;*
- (b) consider filling vacancies by transfer or promotion from within the undertaking;*
- (c) obtain as much information about applicants as is relevant to selection for job, but avoid inquiries which are unnecessary for that purpose;*
- (d) base selection on suitability for the job; and*
- (e) explain the main terms and conditions of employment and give any relevant information about trade union arrangements before an applicant is engaged."*

We therefore invite the Respondent to exercise more transparency whenever effecting a recruitment exercise.

As regard the second dispute, the Tribunal notes that the applicant disagrees to the fact that he does not meet the requirements of the post as put forward by the CWA. To his knowledge he meets all the requirements in terms of qualifications and experience. He also adds that when he was replacing the former Secretary on several occasions he was paid the full responsibility allowance and that this full allowance is paid only to qualified persons. On the other hand the applicant should not forget that every time he was

assigned the duties of Secretary he was clearly informed that "this assignment will not give you any claim for appointment in a substantive capacity."

Furthermore, even if the applicant claims he is qualified and experienced, this should not be regarded as an automatic right to interview. In the context of the present situation we refer to the open advertisement dated 28 July 2003, where there is a note at the bottom which speaks for itself: "only the best qualified candidates will be called for interview." It is up to Management in its best considered judgment to call the best qualified candidates for interview. We can only intervene if being the best qualified candidate, the latter is not called for such an exercise. We do not find sufficient evidence to intervene here.

The Tribunal concludes as follows:-

Dispute No 1: The post of Secretary should have been advertised internally first as spelt out in paragraph 14 of the selection and Recruitment Procedure of the Central Water Authority.

Dispute No 2: The CWA cannot be faulted in not calling Mr. R. Toofany for interview.

We award in both disputes as per our conclusions.

(sd) Rashid HOSSEN

Ag President

(sd) Binnodh RAMBURN

Member

(sd) Masseelamanee Goinden

Member

Date: 23 January 2007

