

PERMANENT ARBITRATION TRIBUNAL

AWARD

RN 831

Before:

Rashid HOSSEN	-	Ag President
Binnodh RAMBURN	-	Member
Rajendranath SUMPETH	-	Member

In the matter of :-

Mrs Marie Lise Koo Tee Fong

And

The Central Water Authority

In presence of :-

The Ministry of Public Utilities

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

Mr M. Ajodah, of Counsel, appears for the Applicant.

Mr J. Beeharry, of Counsel, appears for the Respondent.

Mr I. Maghooa, of the State Law Office, appears for the Ministry of Public Utilities.

The point in dispute is :

“Whether Mrs Koo Tee Fong’s salary should be adjusted with effect from 1 July 1991 to 31 May 2003 following promotion exercise carried out in July 1991 in the grade of Confidential Assistant such that the relativity existing between her salary and other newly promoted colleagues, prior to the promotion exercise, be restored, or otherwise.”

The Applicant, in her Statement of Case, avers that:-

1. She was appointed Confidential Assistant on 8 January 1985.
2. She was granted Rs 3,800 as Confidential Assistant in the Sidambaram Scale of Rs 3,400 to Rs 4,875.
3. On 15 July 1991 the C.W.A. appointed three Confidential Assistants namely Mrs Kautbally, Mrs Kong Pun Cheong and Mrs Bucktowarsing in the PRB (1987) salary scale of Rs 4,750 to Rs 7,500.
4. She was at 15 July 1991 drawing Rs 5,600 on the salary scale. Mrs Bucktowarsing’s appointment did not disturb the hierarchy among Confidential Assistants, in particular herself. However, Mrs Kautbally being placed at the point Rs 6,000 and Mrs Kong Pun Cheong at the point Rs 5,800 disrupted the hierarchy salary wise, whereby she being made to draw a lower salary than her juniors.
5. The above anomaly has so far not been redressed by the various PRB Reports.

In its Statement of Case dated 29 September 2004, the Central Water Authority avers that :-

1. The Applicant joined the Authority as Typist on 10 October 1977 and has subsequently been appointed to the post of Confidential Assistant with effect from 9 October 1985.

2. Another selection exercise to fill vacancies in the said grade took place in 1991 whence Mrs Kong Pun Cheong, Bucktowarsing and Kautbally were appointed Confidential Assistants with effect from 1 July 1991 and they benefited from the award of three increments in accordance with the recommendation at paragraph 6.30 of the PRB Report 1987.
3. As a matter of fact, the averments of the Applicant, as put up in her Statement of Case dated 31 August 2004 which has been filed before the Tribunal, are therefore correct in the sense that the recommendation of the PRB Report 1987 has made her to draw less than her juniors and this anomaly is still prevalent. The Authority has all through supported the Applicant, so that she be placed at least at par salary wise with Mrs Kautbally.

The Respondent (the C.W.A) in a further statement of Case dated 16 November 2004 asserts the following:

- (a) It is submitting for the P.A.T's perusal (vide Appendices I to III), a comparative table regarding the salaries drawn by Mrs Y. Koo Tee Fong, S. Kautbally and M. Kong Pung Cheong during period 1977 to 1 July 2004.
- (b) Despite discussions held with the Ministry of Public Utilities, as at this date, consensus has not been reached as to the interpretation of facts in the above matter.
- (c) It therefore prays the Tribunal to agree that the Authority submits its final recommendation in the matter, after the Ministry of Public Utilities would have made known its stand through its Statement of Case.

The Ministry of Public Utilities, in its Statement of Case dated 17 November 2004, asserts that :-

1. The question of adjustment of salary in respect of Mrs Koo Tee Fong does not arise for the following reasons:-

- (i) Mrs Koo Tee Fong proceeded on 12 months' leave without pay from 8 June 1988 to 8 June 1989. She was not eligible for an increment for that year in accordance with paragraph 1.2.5 (b) of the Personnel Management Manual (PMM) – Annex B refers.
 - (ii) When Mrs Kautbally joined the Central Water Authority she was junior to Mrs Koo Tee Fong. However, the former was granted two incremental credits for additional qualifications. As such Mrs Kautbally has been drawing a higher salary than Mrs Koo Tee Fong since 1977 – Annex A refers.
2. Had Mrs Koo Tee Fong not proceeded on 12 months' leave without pay and had she obtained incremental credits for additional qualifications, she would have drawn the same or even a higher salary than Mrs Kautbally.
3. The higher salary drawn by the junior officer, namely Mrs Kautbally, was not a result of her promotion but rather for reasons stated at paragraph 1 (i) and (ii) above. Hence there is no anomaly.
4. In the light of the above, it is in order for the junior officer, namely Mrs Kautbally to drawn a higher salary than Mrs Koo Tee Fong. There is no justification whatsoever which calls for an adjustment of the salary of Mrs Koo Tee Fong.

It transpires from the examination of the Applicant that:-

1. She joined the CWA as Typist in 1977.
2. Her last basic salary as Typist in September 1985 was Rs 565.
3. She was appointed as Confidential Assistant (now restyled as Confidential Secretary) in October 1985 and was given to start at the initial salary point of Rs 640.

4. According to the P.R.B. Report of 1988 (as per paragraph 6.30 Grade to Grade Promotion) the principle to be applied when someone is appointed from one salary scale to another is the granting of three increments in the new salary scale. This principle was not applied in her case in October 1985.
5. Mrs Kautbally and Mrs Kong who were also Typists were appointed Confidential Secretaries in July 1991 and were granted three increments in the new salary scale.
6. In July 1991 after six years as Confidential Assistant she was earning Rs 3,800 whereas Mrs Kautbally and Mrs Kong immediately after their appointments in 1991 as Confidential Assistants were drawing Rs 4000 and Rs 3900 respectively.
7. Mrs Kautbally and Mrs Kong had they been appointed Confidential Assistants on the same date as applicant, they would have earned the same starting point of Rs 640. She infers therefore that there was an error somewhere and wrote to the PRB in 1993 (Document C). She also wrote to the CWA in the year 2001 (Document D) and no correction was made at any level. Consequently, she declared a dispute in January 2004.
8. Her salary was Rs 3500 when she applied for leave in 1988. There was no increment for her in 1988 and as at July 1989 her salary was Rs 3600 and at that time the salary of Mrs Kautbally was Rs 3500 and that of Mrs Kong Rs 3400.
9. If applicant's colleagues were appointed Confidential Assistants on the same date as applicant (in October 1985), they would have earned the same salary of Rs 640. The fact that her colleagues had additional qualifications and the fact that she had taken one year leave without pay have no bearing on them earning more .
10. She claims that her salary ought to be adjusted w.e.f 1 July 1991 when the anomaly cropped up. The Chesworth Report at paragraphs 4.10.11 and 4.10.12 recommends that in such anomalous cases the salaries of the officers concerned should be

adjusted so as to draw the same salary as their colleagues appointed after them. Applicant wishes to earn at least the same salary as her colleagues who are junior to her. There is the same recommendation in all the PRB Reports coming after 1991-PRB 1993, PRB 1998 etc.

11. The discrepancy arose as from the Report of 1988 when her colleagues were promoted thereafter in 1991.

The applicant concedes in cross-examination that:-

1. The anomaly occurred in 1991 and the case was sent to the Ministry of Labour in January 2004.
2. She has been employed by the Central Water Authority for more than 25 years.
3. She is praying the Tribunal to review an anomaly which has cropped up in 1991 after the Report of 1988
4. She was working as Typist at the Central Water Authority in 1977 and at that time Mrs Kautbally was also working as Typist.
5. She was earning a monthly salary of Rs 360 and Mrs Kautbally was earning a higher salary, Rs 405.
6. Mrs Kautbally got two additional increments because she had shorthand qualification.
7. Had she possessed the same qualifications she also would have qualified for the two incremental credits.

8. In the year 1985 she was promoted Confidential Assistant while Mrs Kautbally was still a Typist.
9. There was a PRB in 1988 whereby she signed the Option Form and agreed to the new terms and conditions.
10. From 8 June 1988 to 8 June 1989 she was on leave without pay and was not eligible for the one year increment.
11. She still does not have the qualification as shorthand.
12. In 1985 when she was promoted Confidential Assistant her salary was higher than that of Mrs Kautbally although she lost one annual increment and was less qualified than Mrs Kautbally who had two incremental credits.
13. In the year 2003 after the PRB Report, she signed a new Option Form and agreed to the new terms and conditions.

On re-examination the Applicant affirms that:-

1. Her colleague had the two increments because of additional qualifications.
2. When she was appointed, she started at the starting point (Rs 640) of the new salary scale. Even if she had those additional qualifications, it would not have changed anything.
3. The problem cropped up not because of the two increments according to qualifications and of the leave without pay, but because of the three increments granted to her colleagues on their promotion to the post of Confidential Assistant as a result of the PRB Report of 1988. The same principle was not applied in her case in the year 1985.

Mr M. Ajodah, addressing us only on the issue of jurisdiction, submits as follows:-

1. In the year 2003, the law was amended. This Tribunal has no jurisdiction if – “*a contract of employment apply to the employee as a result of the exercise by him of an option to be governed by the corresponding recommendations made in the report of the PRB*”. The anomaly had arisen since 1991 and since 1993 the Applicant had written either to the PRB or to her employer concerning this anomaly, but nothing was done.
2. If an option is signed by anyone the person foregoes the right to come before this Tribunal. But when this person has signed previous option forms with respect to previous reports whether it has been Chesworth in 1988, or PRB in 1993 or 1998 this would not apply because these disputes are existing and in the PRB, provision was made for the resolution of those errors.
3. As far as other facts are concerned, he leaves them to the appreciation of the Tribunal.

In his submission, Mr J. Beeharry, for the CWA, states that:-

- (a) Counsel for the Applicant has relied on limb (2) of the amendment at Section 3 subparagraph (a) and seems to have forgotten about limb (1). Limb (1) is very clear – it is not deemed to be within the jurisdiction of this Tribunal if the employee is praying for an alteration in remuneration or allowance of any kind. The contract of employment is between the Central Water Authority and Mrs Koo Tee Fong. She has been employed 25 years prior to 2004 and the case actually came to this Tribunal in August 2004 (the letter declaring a dispute was written to the Ministry in January 2004) and this present amendment came into effect on 16 June 2003.
- (b) So in virtue of limb (1) of the amendment this Tribunal cannot entertain the present application.

The State Counsel briefly pointed out to the Tribunal that Mrs Koo Tee Fong herself has admitted that she has signed the Option Form as regard to the 2003 PRB in which she accepted all the new terms and conditions and therefore she is bound by it because it is irrevocable. Counsel is also of the view that as per the Industrial Relation Amendment Act the Tribunal has no jurisdiction to hear the case.

In reply, Mr Ajodah states that it is true that there are two limbs in the amendment at subparagraph (a), but both conditions have to be present for the exclusion clause to apply.

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

1. The “anomaly in question” goes back to 1991 and it is at an extremely late stage that this matter has been brought before the Tribunal.
2. The Central Water Authority is supporting the case being agreeable to the stand of the Applicant. An offer was even made to the Applicant that the matter be settled wholly and amicably. However, the Respondent has not been consistent in its approach – it makes proposals and then retracts. The Respondent is being troubled by the letter dated 17 November 2004 from its parent Ministry where it is said that there is no justification whatsoever which calls for an adjustment in the salary of the Applicant. The representative of the Respondent, Mr Tuyau was not very straight forward in his answers to questions put to him before the Tribunal. Moreover, not being represented by a Counsel at the beginning, he could not address the Tribunal on matters pertaining to law.
3. At some point in time it appeared that the Central Water Authority did not seem to know where it was going concerning the case – sometimes it admits everything but at the end of the day it did not admit to everything. The problem with the Central

Water Authority was that it did not file an amended Statement of Case to express its updated stand.

4. The Applicant has admitted that she has signed the Option Form as regard the 2003 P.R.B. Report. She has also admitted having signed all Option Forms regarding all P.R.B.s and did not sign anything under protest.

Now this Tribunal has no jurisdiction to entertain the present matter in the light of Section 3 of the amended Industrial Relation Act of 2003 :-

“3. ***Section 2 of principal Act amended***

Section 2 of the principal Act is amended –

- (a) *in the definition of “industrial dispute” by deleting paragraph (a) and replacing it by the following paragraph –*
 - (d) *a contract of employment or a procedure agreement except, notwithstanding any enactment, those provisions or the contract or agreement which –*
 - (i) *concern remuneration or allowance of any kind; and*
 - (ii) *apply to the employees as a result of the exercise by him of any option to be governed by the corresponding recommendations made in a report of the Pay Research Bureau.*
- (b) *by inserting in its appropriate alphabetical place the following definition –*

“Pay Research Bureau” means the bureau referred to in the yearly Recurrent Budget under the Vote of Expenditure pertaining to the Prime Minister’s Office”.

The present matter came to this Tribunal in August 2004 and this present amendment came into effect in June 2003.

The applicant has bound herself contractually to the PRB Report 2003 by the very fact of opting for it and has thus fallen out of the definition of “industrial dispute”. She has chosen to be governed “by the corresponding recommendations made in a report of the Pay Research Bureau” which in the present case is the PRB report of 2003. The Tribunal cannot go against the statutory provisions.

The applicant in our view has opted out of the definition of “industrial dispute”.

True it is that the Chesworth Report of 1988 (paragraphs 4.10.10, 4.10.11 and 4.10.11 and 4.10.12 which we reproduce hereunder) made recommendations with respect to her application, the bold fact remains that she chose to be opted out from the parameters of “industrial dispute”.

“Salary on Promotion

4.10.10. P.R.B. recommends at para 6.30 of its report that grade to grade promotion in general be marked by an increase representing the quantum of three increments. The Commission recommends that the same applies to class to class promotion.

4.10.11. However, following the application of the “point to point” salary conversion on the implementation of P.R.B. salaries, officers in certain grades appointed before the 1st August 1987, are drawing salaries less than their colleagues who have been appointed on or after that date and to whom the grant of three increments on promotion has applied.

4.10.12. The Commission recommends that in such anomalous cases the salaries of the officers concerned should be adjusted so that they should draw the same salaries as their colleagues appointed after them.”

Nothing however prevents the Employer from resolving the issue directly with the Employee.

The application fails and is accordingly set aside.

Rashid HOSSEN
Acting President

Binnodh RAMBURN
Member

Rajendranath SUMPUTH
Member

Date: 22nd February, 2008

