

## Permanent Arbitration Tribunal

### Award

RN 891

Before:

Rashid Hossen	-	Ag. President
Binnodh Ramburn	-	Member
Masseelamanee Goinden	-	Member

In the matter of :-

Ashan Ashraf  
and  
National Computer Board

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

Mrs. R. Saha, of Counsel, appears for the Applicant

Mr I. Maghooa, Acting Assistant Parliamentary Counsel, appears for the Respondent

The points in dispute are:

- (i) *“Whether Mr Ahsan Ahsraf should report to the Executive Director of the National Computer Board in line with his Scheme of Service, or otherwise.”*
  
- (ii) *“Whether Mr Ahsan Ashraf should be granted salary in the scale of Rs 32 000 x 1000 – Rs 39 000, or otherwise.”*

The applicant has submitted two Statements of Case – the first one dates 26 October 2005 and the second one which is amended is dated September 2007.

The Respondent has replied to both the Statements of Case of the Applicant.

**Case of Mr Ahsan Ashraf** – as averred in the amended Statement of Case:

1. Mr Ahsan Ashraf is an IT professional holding a first post-graduate qualification from the University of Grenoble since 1993 and a second post-graduate qualification (MBA) obtained in 2004. He has 13 years experience to his credit (one year with the Central Informatics Bureau and 12 years to date with the NCB).
2. In April 1995 he was offered employment for the post of Research Officer on the following conditions:-
  - (i) Salary Scale:- Rs 9000 – 15000
  - (ii) Appointment governed by NCB Act and 1993 PRB Recommendations
  - (iii) End of Service Benefits as per Statutory Bodies Pension Fund Act
  - (iv) To perform duties as per the Scheme of Service.
3. In May 1995, he accepted the offer made by the NCB.
4. In June 1996 the NCB confirmed his appointment as Research Officer. His line of responsibility was confirmed as being directly to the Executive Director or any other person nominated by the Board. In other words he was at Level 2 of the overall Management, along with other Research Officers. He was also in terms of seniority the No. 3 of the NCB.
5. In the early part of his career, he was a satisfied employee who had complete job satisfaction and gave the whole of himself with enthusiasm to the activities of the NCB.

6. He opted for the new conditions of service proposed to him in the PRB Report 1998. Different Research Officers in post at the NCB were governed by different Schemes of Service.
7. The organization structure of the NCB of 1995 had provided for (a) an Executive Director, (b) 8 Research Officers and (c) Technical officers. The Research Officers were all responsible to the Executive Director or any other person directed by the Board.
8. As the workload increased and following representations by the Research Officers, allowances were paid to these officers since around March 2001. According to the employee payment slip dated May 2002, his extra allowance amounted to Rs 3500 per month.
9. A new organization structure was set up at the NCB to allow it to undertake enhanced responsibilities. The new structure and revised scheme of service approved by the PRB became effective as from June 2002.
10. The setting up of the new organisational structure was undertaken without consultation with the staff and behind the back. The staff was never made aware of what was in store for them.
11. All discussions were held between NCB represented by the Executive Director, the parent Ministry, the Ministry of Civil Service Affairs and the PRB. The staff was never invited by Management to take part in any consultative meeting in relation to the new organization structure.
12. The secrecy is an indicator that the aspiration of the staff that was driving the organization since some time was not given any consideration by Management. An atmosphere of unease spread over the organization at that time as staff was legitimately concerned that their position would be affected in the transition period

and that others from outside might be coming to take their rightful place and thwart their legitimate expectation.

13. He was informed by Management about the new structure and the new scheme of service, whereas this affected his fundamental rights.
14. He recalls that he and other members of the staff had been called to a meeting chaired by the then Chairman, but no minutes were taken of that Meeting and there is no record of what was said.
15. In the press in February 2002 were advertised 2 posts of Manager – (a) Manager, Planning, Research and Development and (b) Manager, Business Development and Promotion Division. Mr Vijay Mauree, Research Officer, applied for post “a” and was appointed. Mr Ashraf applied for post “b” but was disappointed.
16. He was not recommended for the post despite possessing all the requisite qualifications and experience. He was never even informed whether he had been selected or not. The post has been subsequently filled by someone coming from outside the organization and who is not necessarily more qualified and experienced than him.
17. This decision not to appoint Mr Ashraf is the root cause of the problem that subsequently arose between Mr Ashraf and the Management of the NCB. Mr Ashraf was one of the earliest recruits of the NCB, just after Mr Vijay Mauree, the number 2 of the NCB.
18. The new salary structure of the NCB became effective as from June 2002. In the process, he was even affected by a salary cut at the end of June 2002.

19. It took a year before the NCB explained to Mr Ashraf about his salary cut on a matter which they had been discussing with the Authorities behind the back of the officers and which they failed to foresee.

The Ministry recommended a monthly compensation of Rs 2,300 to be paid to compensate for the loss in pay packet drawn.

20. The PRB Report 2003 ratified the organisational structure approved in June 2002 and provided for the following posts for the NCB:-

- Executive Director
- Managers
- Assistant Managers
- Business Analyst/IT Consultant/Research Officer

The PRB Report 2003 also provided for the post of Research Officer (Personal) in the scale of Rs 16500 x 500 – 17000 x 600 – 20000 x 800 – 28000 x 1000-30000.

This post was probably meant to cater for the case of Mr Ashraf.

21. He did not opt for the PRB 2003 because he was frustrated by the fact that he has been deprived of his legitimate expectation to the post of Manager, Business Promotion and Development and that he would be prevented henceforth from challenging the anomalies relating to the post of Research Officer as featured in the PRB 2003.

22. Research Officer had continued to be governed by a Scheme of Service which was specific to each of them and at the time that Mr Ashraf signed the Option Form in 1988, he was governed by the Scheme of Service at Annex 5 and no other. Furthermore, they were all reporting to the Executive Director.

23. On 23 August 2004 (Annex 19) Mr Ashraf asked the Executive Director to correct the errors and injustice concerning his salary, to quit harassing him and to respect his Scheme of Service.

24. On 13 September 2004, the Executive Director informed him that the PRB Report is a public document and can be consulted at the administration. He was again reminded to report to the Manager, Planning, Research and Development.
25. He suffered prejudice as a result of the new organisational structure and his expectations were thwarted by the NCB failing to make him operate at Level 2 position.
- Furthermore, the Executive Director has failed to explain the following to him as requested by him in a letter dated 26 August 2004:
- (i) Whether the Executive Director of the NCB has received directions from the NCB Board;
  - (ii) The date when the Board has taken such decision; and
  - (iii) Whether the PRB Report 1998 makes reference to the post of Manager, Planning, Research and Development.
26. In view of the above, on or about 18 September 2004 a dispute was therefore made to the Ministry of Labour, Industrial Relations and Employment.
27. A deadlock was reached at the Conciliation and Mediation Division of the Ministry of Labour, Industrial Relations and Employment and the Ministry referred the matter to the Industrial Relations Commission.
28. On or about 14 April 2005, the Industrial Relations Commission sent a Report to the Ministry stating that there has been no settlement in the Industrial Dispute between Mr Ashraf and the NCB.
29. By letter dated 26 April 2005, Mr Ashraf informed the Ministry of Labour, Industrial Relations and Employment of same and requested that the dispute be referred to the Permanent Arbitration Tribunal.

30. Subsequently, the Ministry of Labour, Industrial Relations and employment informed him that the dispute has been referred to the Permanent Arbitration Tribunal.
31. On 24 May 2005, the P.A.T. informed Mr Ashraf that the case has been fixed on 8 June 2005.
32. It is a long time since the restructuring of the NCB which dates back to June 2002 whilst the refusal of the NCB to appoint Mr Ashraf to the post of Manager, Business Development and Promotion dates back to February 2002.
33. Working relations have soured because there is a dead lock between the NCB's requirement that Mr Ashraf reports to the Manager, Planning Research and Development and Mr Ashraf's decision not to opt for the PRB 2003.
34. He is subject to victimization, he has been subject of charges and his increment for July 2007 has been withheld.
35. It would appear that 2 additional posts of Manager (Level 2 ) have been created for personnel operating the Government Online Centre at Ebene and the Incubator Centre at Jade Court, in addition to the 2 posts of Manager created by the PRB 2003.

If additional posts have been created for other staff, there is no reason why a personal post of Manager could not have been created for Mr Ashraf, given his qualifications, experience and his commitment to the NCB right from the start.

**PRAYER AND CONCLUSION**

1. It is the Applicant's contention that the Tribunal should intervene for the following reasons:
  - (a) The post of Research Officer which the Applicant occupies ever since he joined the NCB was always at Level 2 just below the level of the Executive Director.
  - (b) Since his employment with the NCB, Mr Ashraf has always been working as Research Officer and has been reporting to the different Executive Directors serving the Board.
  - (c) The NCB's request to Mr Ashraf to report to the Executive Director through the Manager, whereas he had always been reporting to the Executive Director, is tantamount to asking him to assume the duties of Assistant Manager, which is a demotion.
  - (d) Although it is not disputed that the NCB needed a reorganization to face new challenges, that reorganization was not carried out with the transparency and open consultative process that was required with the staff that was driving the organization from the start including Mr Ashraf.
  - (e) Furthermore, the post of Research Officer, should not have been downgraded or reshuffled.
  - (f) The NCB has created 2 additional posts of Manager besides the 2 posts approved in the PRB 2003. There is no reason why an additional post could not have been created for the Applicant.
  - (g) The salary structure should reflect the post occupied and the legitimate expectation of the Research Officer when he chose to join the NCB and



accepted employment as such and also when he chose to stay and make his career at the NCB.

2. The Applicant therefore prays that the Tribunal should make recommendations in terms of the above.

In reply to the Statement of Case of the Applicant, the respondent avers that:-

**Paragraph 1.** Mr Ashraf has about nine years experience at the NCB as he has not been performing any work assigned to him since July 2004.

**Paragraph 4** As per the existing structure at that time all Research Officers were reporting directly to the Executive Director.

**Paragraph 10 – 12.** The new structure of the NCB was prepared and was approved by the appropriate parties. It was never made an issue by the staff for the Union that no consultation was made. All stakeholders were consulted. The NCB specifically denies the other averments under paragraph 10-12.

**Paragraph 13 – 14.** All Research Officers were informed by the Chairman of the new approved conditions of service in the new NCB organization structure would apply to them also with effect from June 2002.

**Paragraph 15.** It was an open vacancy and the interview exercise was carried out by a panel and the decision was taken by the Board.

**Paragraph 16.** It is not the practice of the NCB to inform candidates who had not been selected following the interview.

Mr Ashraf did not challenge the decision of the Board at that time . The other averments made under this paragraph are denied.

**Paragraph 18 – 19.** Appropriate advice was sought. Mr Ashraf never entered a case to recover what he allegedly considered to be a salary cut.

**Paragraph 20.** Respondent denied the averment that the post was meant to cater for the case of Mr Ashraf.

**Paragraph 21.** The salary scale for Manager, Rs 32000 x 1000 – 39000 is applicable for Managers who had opted for PRB option 2003.

The salary scale for Manager approved in 2001 was 23470 x 700 – 24870 x 800 – 28070.

**Paragraph 22 – 24** All Research Officers were reporting to the Executive Director or any other person directed by the Board. The Board at its meeting held on 21 July 2004 had decided that Mr Ashraf should report to the Executive Director through the Manager, Planning, Research and Development in the new organization structure but the applicant has persistently refused to report to the Manager.

**Paragraph 25** Applicant was informed in office letter dated 23 July 2004. The information was also communicated to him at the meeting held at the Conciliation and Mediation Division of the Ministry of Labour, Industrial Relations and Employment on 22 October 2004 and the Industrial Relations Commission on 17 February 2005. He was again informed in office letter dated 19 June 2007.

**Paragraph 28.** The Board has decided that Applicant be assigned the duties of Assistant Manager at the NCB for a period of 6 months and upon satisfactory performance, he would be appointed as Assistant Manager as per Board decision at its meeting held on 22 March 2005. Applicant was offered the post of Assistant Manager at the NCB (during the meeting at the Industrial Relations Commission) but he did not accept the offer.

**Paragraph 29-31.** No comment

**Paragraph 32.** The post of Manager, Business Development and Promotion was an open vacancy and the best candidate was offered the post.

**Paragraph 33.** The NCB reiterates the averments in reply to paragraphs 22-24.

**Paragraph 34.**

- As per Personal Management Manual, Paragraph 1.2.3,  
“an officer is not entitled to draw an increment as of right but only with the specific approval of the Responsible Officer or the supervising officer. An increment may be granted as the case may be, where the work and conduct of the officer during the previous twelve months have been at least satisfactory.”

In the case of the applicant, he had not been performing any work. Hence his increment has been deferred in July 2006 and 2007.

- Board has also appointed a Disciplinary Committee at its meeting held on 15 March 2007 for the case of Mr Ashraf on the following charges:

**Charge 1:**

*That you, Mr Ahsan Ashraf, employee of the NCB, has constantly and continuously failed to comply with instructions as per your scheme of service, in that you have constantly and persistently refused to comply to the Board decision to report to the Executive Director through the Manager, Planning, Research and Development, direction given to you by way of letter 23 July 2004.*

**Charge 2:**

*That you, the aforesaid Mr A. Ashraf, have used disobliging remarks and a defying attitude vis a vis your senior officer, namely Mr Vijay Mauree, Manager Planning, Research and Development , as exemplified in Annexes C,D and E and which attitude is prejudicial to the proper functioning of the NCB.*

The hearing: Scheduled on 31 January 2008.

**Paragraph 35.** The posts of Manager, Government Online Centre and Manager, Incubator Centre were advertised in the press but Mr Ashraf did not apply for the two posts.

Respondent contends that:-

- (a) In line with the approved organisational structure, effective as from June 2002, Research Officers no longer report directly to the Executive Director.
- (b) The new structure provides for the post of Executive Director, Managers, Assistant Managers, and Research Officers.

- (c) The new Scheme of Service which provides for reporting to the Assistant Manager (which in practice has been to the Manager) is not tantamount to a demotion.
- (d) There has not been any downgrading of existing post.
- (e) Applicant is being remunerated in accordance with law for the post he holds as Research Officer and moves that the dispute as referred to the Tribunal be set aside.

The Applicant, Mr Ashraf, examined by Counsel Mrs. Saha affirms to the truth of the content of the amended Statement of Case.

He furthermore, testifies as follows:

1. He denies the issue raised by the Respondent that he has only 9 years to his merit at the NCB because he has not performed any work assigned to him such as IT Course, IT Competition, advisory services for parastatal bodies and also IT Standards. He has been elected as Chairman of the IT Standards Committee and this Committee had been doing various works since 2004 and up to 2007..
2. The work of the IT Standard Committee was of crucial importance to the NCB and to the country as well. His employer is aware that he has been the Chairman of this Committee between 2004 and 2007.
3. Around 2001 the new structure of the NCB was created. Personally he has not been informed about this new structure despite being the Number 3 of the NCB at that time. Unfortunately he never got something in writing about what would happen to the existing staff following the structure.
4. He did not challenge the decision of not being selected following the interviews because he was not aware of the decision.

5. He wrote several letters to the NCB to inform it about his salary cut. For such grievances he does not need to go and find a lawyer. He thinks that in the interest of the fundamental principles of fair employment the NCB itself comes and resolves the problem.
6. There was a letter sent to him that “The Board at its meeting of 21 July 2004 decided that Mr Ashraf should report to the Executive Director through the Manager, Planning Research Development”. He thinks that when the Board took this decision it has not been properly appraised of what has been happening. He was not given a chance of hearing and he could not explain his position.
7. He is bound by the PRB Report of 1998. He did not opt for the PRB of 2003 because he found this Report prejudicial to him. Since there is no post of Manager in the PRB Report of 1998 he cannot go and report to someone who does not exist in his condition of service.
8. He denies the statement of the Respondent “that he has not been performing any work”. He had several jobs that have been assigned to him and he has been regularly performing these jobs. It is the Executive Director who gradually was trying to remove these jobs from him and the latest one was the IT Standards.
9. The Board has appointed a Disciplinary Committee on 15 March 2007 for two charges against him. (Hearing to be on 31 January 2008). He would like to inform the Tribunal that the Board of the NCB has been suspended since June 2007 and he is not aware if this Board has been reconstituted. He finds it strange that a sub committee of the Board, a Disciplinary Committee has been appointed to examine his case. The other thing he has to say about this is that the points that the Disciplinary Committee is raising are the same points that are before the Tribunal.

10. He did not apply for the posts of Manager, Government Online and Manager, Incubator Centre because he was not aware of them because there was no internal advertisement.
11. The Executive Director, Mr Mohee has left the NCB and there is a new officer in charge at the NCB right now.
12. Recently, there has been the National ICT Strategic Plan where this has been approved by the Government and the NCB has got enhanced responsibilities. There are numerous projects that are coming in and he thinks his skills will serve these projects.

The witness, under cross-examination, concedes that:-

1. At present he is a Research Officer at the NCB and has decided not to be governed by the PRB 2003 Report. Therefore his Terms and Conditions of Service are governed by the PRB 1998 Report.
2. He is not aware that following the PRB 1998 Report, there was a new Scheme of Service effective as from June 2002, but he is aware that a new salary structure, in consultation with the PRB, became effective since June 2002.
3. It was only in 2004 that he became aware of the new organization which was set up in 2002.
4. Mr Mauree, who is today the Officer in Charge, joined the NCB as Research Officer in June 1993.
5. The whole issue of reporting to any person other than the Director became an issue for him when Mr Mauree was appointed as Manager, Planning, Research and Development.

6. He is being paid by the NCB for work which he is performing as Research Officer in accordance with the PRB Report 1998.
7. He agrees that given the enhanced responsibility of any organization it is quite legitimate to have a new organisational structure.
8. The Union was recognised in 2001. So if the organisational structure was done before that, there was no Union.
9. When he made representations to the Board, he was informed that the Scheme of Service as per the PRB Report 1998 will apply in his case and was instructed that he will have to report to the Executive Director, through the Manager, Planning, Research and Development.
10. As per his Scheme of Service, he would accept work only from the Executive Director and to report to the Executive Director. Whenever there was any request coming from Mr Mauree, he replied he did not recognize Mr Mauree as being the Manager at the NCB.
11. His salary changed in 2002 and he wrote several letters to tell that he did not agree with this change.
12. Up to now he is a Research Officer and the Salary Scale of Rs 32000 x 1000 – 39000 pertains to the post of Manager.
13. When Mr Mohee, as Executive Director informed him to report to the Executive Director through the Manager, applicant asked whether it is a Board's decision.
14. Even if it were a Board's decision, he would not be satisfied because there have to be some grounds on how the Board came to take a decision and cannot do so unilaterally.

On re-examination, the witness affirms that:-

1. He received his Scheme of Service in 1995 when he was appointed and was never moved to another Scheme of Service.
2. He did not apply to the same post as Mr Mauree. So there was never any need for him to challenge Mr Mauree.
3. He thinks that he has been downgraded in his post and his expectation is that his salary should be at Level 2.

Mrs. Mulliah, Administrative Secretary at the NCB, testifies that:-

1. She joined the NCB in December 2004 and she has retrieved from the file whatever averments made because she was not in the organization in 2002.
2. There has been two Statements of Case put in by the NCB in reply to those of the Applicant. She solemnly affirms to the correctness of matters which have been stated therein for the Respondent.
3. The duties pertaining to Mr Ashraf is as per Document B, which is the updated scheme of service.
4. Each time there were memos which were addressed to Mr Ashraf by Mr Mauree, Mr Ashraf minuted certain remarks to these memos.
5. A new Salary (Rs 17270 to 21470) was proposed in 2002 by the Board to all Research Officers. In 1998 the salary scale was Rs 12570 to Rs 21470.



6. Today Mr Ashraf is drawing the salary scale approved in 2002 because he has not opted for the PRB Report 2003.

The witness under cross-examination admits that :-

1. Although she came at the NCB in 2004, she is aware that different Research Officers had different Schemes of Service at the NCB.
2. The Applicant has been paid as to the package decided by the Board in June 2002 because of the increased amount of work that Research Officers were doing.
3. The salary that was given to Mr Ashraf in June 2002 reflects the number of years that he had been in that post.
4. Prior to June 2002, Research Officers were earning their basic salary plus an allowance of Rs 2500. When they got the new salary the allowance was gradually reduced until the total salary is the same.
5. She does not know if any increment was given for years of service.

Mr Maghooa, for the Respondent, submitted that:-

1. With the enhanced dimension which the ICT Sector has taken, there was a legitimate need to have a restructuring of the NCB. With the new structure 'Manager' and 'Assistant Manager' came in. Hence, the Research Officers who were initially at Level 2 are now at Level 4.
2. There has been a legitimate expectation on the part of Research Officers to become Managers. But the fact is that there was a competition for these posts and one among the Research Officers namely Mr Mauree was appointed Manager to

Research Planning. Mr Ashraf who also competed was not selected and this is where the whole issue started in so far as work to be performed and the reporting are concerned.

3. The Applicant is a Research Officer and is governed by the PRB Report 1998, a choice that he made. There was a new package in 2002 and he has been paid in that new salary scale by the Board. Mr Ashraf has admitted that the salary structure of Rs 32000 is a salary structure for the post of Manager. So the issue that he should be granted that salary does not arise.
4. As regard the issue of reporting to the Executive Director, the Scheme of Service provides precisely that he should report to the 'Executive Director or any other person designated by the Board. The other person, it was indicated to Mr Ashraf, to whom he should report is Mr Mauree, Manager Planning, in a letter sent by the Executive Director, Mr Mohee.
5. The "otherwise" in the first point in dispute will be that the Board would indicate that in line with the Scheme of Service, the Board may decide that he would have to report to another person.
6. From the letter of Mr Mohee, it is said "I am instructed" and it is a letter from the NCB. It cannot be imputed that it is not a Board's decision.
7. It would appear from the testimony of Mr Ashraf that even assuming that the Board would have taken the decision he does not accept it on the face of it. He must be shown the minutes of the Board and he would have to go and see the basis on which the decision is taken. He personally submits that this is not a sound industrial relations by questioning at all levels the decision of the Board.

8. There is no genuine dispute before the Tribunal in the light of the evidence which is on record.

In her submission, Mrs Saha stated the following:-

1. Mr Ashraf has been one of those who have laid one of the foundation stones of the NCB. Five years after there is a re-organisation that is proposed behind his back – there were no consultations with the staff. The Applicant has contributed to the development of IT Standards in Mauritius.
2. He was not appointed Manager to which he applied. He opted to go by the PRB Report 1998 because he found that doing otherwise would be prejudicial to him. His salary is much less than what he legitimately expected and his career development has been brought to a halt.
3. Within the PRB Report 1998, Mr Ashraf was at Level 2. Since 2004 the Employer has been asking him to report to the Manager, Planning, Research and Development. Management has said that this was a Board's decision. Since this concerns the career of Mr Ashraf, the Board should have given him a hearing so that they would have had his say.
4. The Applicant has not been fairly treated in the light of his commitment and his skills. She prays that the Tribunal should make recommendations as per the prayer and conclusions made in the Statement of Case.

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

1. One of the duties of the Research Officer is to report to the Executive Director or any other person nominated by the Board.

2. In 2001 a new organizational structure was set up at the NCB to allow it to take enhanced responsibilities. This new structure was approved by the Board, the Ministry responsible for Information, Technology and Communications and by the Ministry for Civil Service Affairs.
3. A new Scheme of Service together with a new salary structure approved by the PRB became effective as from June 2002.
4. Following the new organizational structure, there was an open competition in 2002 for two posts of Managers and for other posts. Mr Ashraf applied for one of the post of Manager, but was not appointed. Another Research Officer namely Mr Mauree applied for the other post of Manager and was appointed.
5. By letter dated 23 July 2004 and signed by the Executive Director the Applicant was instructed to report to the Executive Director through the Manager, Planning, Research and Development as per his Scheme of Service in the new structure.
6. The Board also decided that Mr Ashraf be assigned the duties of Assistant Manager at the NCB for a period of 6 months and upon satisfactory performance, he would be appointed as Assistant Manager as per Board decision at its meeting held on 22 March 2005.  
The Applicant was offered the post of Assistant Manager in the NCB (during the meeting at IRC) but he did not accept the offer.
7. Two additional posts of Manager have been created for personnel operating the Government Online Centre at Ebene and the Incubar Centre at Jade Court. The Applicant did not apply because he states that he was not aware of these vacancies because there was no internal advertisement. The Respondent, on the other hand states that these posts were advertised in the press.

8. Mr Mohee has left the National Computer Board and there is a new officer in charge namely Mr V. Mauree.

In so far as dispute No. 1 is concerned, we should at the outset look at the Applicant's Scheme of Duties.

**Research Officer**

Salary: Rs 12,570 x 400 – 12,970 x 500 – 15,470 x 600 – 21,470

Qualification: (a) *The Cambridge Higher School Certificate with at least two passes at Principal level one of which should be in a science subject or Mathematics*

(b) *A degree in Computer Science from a recognized institution or An alternative qualification, major part of which will be computing, acceptable to the National Computer Board.*

Profile: *A good knowledge in emerging Information Technologies is essential + post graduation experience would be an advantage.*

*Some relevant working experience in the fields of multi-media applications, Computer network & electronic communications, Internet and expert systems will be an added advantage.*

Duties: *The Research Officer will report directly to the Executive Director or any other person directed by the Board and will be responsible for the implementation of the NCB's programme of activities which will include:*

- (a) *Applied development work in the areas of emerging information technologies relevant for immediate and future applications in Mauritius.*
- (b) *Preparation of effective educational materials for spreading IT awareness and culture in Mauritius.*
- (c) *Planning and organization of seminars, exhibitions, workshops in the field of IT.*
- (d) *Design and creation of multimedia based hypertext materials for WWW.*
- (e) *Any other cognate duties as may be necessary.*

It clearly indicates at item No 1 : “Will report to the Executive Director or any other person nominated by the Board”. It is clearly understood that the reporting does not exclusively concern the Executive Director but other persons as well.

To meet new challenges, the organisational structure of the NCB has been reviewed. It has enhanced its activities and this has automatically necessitated in the recruitments of new personnel at all levels and inevitably at Management level. It is the legitimate aim of any Employer to have the competent officers in its organization. In this connection there was an open competition in 2002. Among those who competed there was Mr Ashraf who applied for the post of Manager. He was not selected and henceforth problems between himself and the Employer began to crop up. As mentioned above, Mr Mauree was appointed Manager but the Applicant did not recognize him as Manager. Mr Ashraf has averred that someone coming from outside the NCB has been appointed Manager, Business Development and Promotion Division and is not necessarily more qualified and experienced than him. The Applicant should bear in mind that appointments are made after an interview carried out by a panel and approved by the Board. Many criteria are taken into consideration to appoint someone particularly at Management Level and it is the most deserving candidate who is appointed. There is no evidence that the Applicant is more deserving than the other candidates appointed.

We find it strange that the Applicant has testified that he did not know when the new structure was implemented. Yet he applied for the post of Manager in 2002 and it is unbelievable when he states that it was only in 2004 that he became aware of the new structure. At paras. 12 and 13 of Applicant’s Statement of Case, we find that he was being informed of Management’s new work structure.

Now by letter dated 23 July 2004 from the NCB and signed by the Executive Director, the Applicant was instructed to report to the Executive Director through the Manager, Mr Mauree but he persistently refused to report to the latter. The Applicant has doubts as to

whether it was a Board's decision, but he has not been able to prove that it was not a Board's decision.

In view of the above, we find that the Applicant is on the wrong track when he states that he will be reporting only to the Executive Director and to no one else. His scheme of service speaks also of "or any other person". The Tribunal cannot interfere with the Scheme of Service. **(See Hurry v/s GM SCJ 51 of 1996).**

The Tribunal, as far as dispute No 1 is concerned, concludes that Mr Ashraf should report to the Executive Director of the NCB through the Manager or any other person directed by the Board, Planning, Research and Development in line with his Scheme of Service.

As regard dispute No 2, the demand of the Applicant appears to be unjustified. He joined the NCB as a Research Officer in 1995 and is still a Research Officer to date. He cannot claim the salary of that of a higher grade i.e. that of a Manager which is in the Scale of Rs 32000 x 1000 – 39000.

It is worth mentioning here that the salary of a Research Officer is as hereunder:-

- (f) Rs 12570 x 400 – 12970 x 500 – 15470 x 600 – 21470 – as per PRB 1998 for which the Applicant has opted.
- (g) Rs 17270 x 600 – 21470 – the new salary structure effective as from June 2002.
- (h) 16500 x 500 – 17000 x 600 – 20000 x 800 – 28000 x 1000 – 30000 (Personal) – PRB 2003.
- (i) 22400 x 800 – 28000 x 1000 – 30000 – PRB 2003.

It is apparent that the Applicant is not satisfied with the salary he is receiving actually as Research Officer for the number of years of service at the NCB. However, this issue has

not been canvassed satisfactorily before the Tribunal. The Applicant has not explained why the salary he is earning is less than what it should have been according to him.

Counsel for the Applicant has submitted that the career of the Applicant has been brought to a halt. However, it should not be forgotten that Mr Ashraf was offered the post of Assistant Manager, a post that he refused. The choice was his. In the circumstances, the Tribunal cannot award anything in favour of the Applicant under “otherwise” as far as dispute No 2 is concerned.

As regard the demand of a salary of Rs 32000 x 1000 x 39000 it will be an example of a glaring irregularity if the Tribunal awards this claim. A Research Officer should be paid the Salary of a Research Officer, not that of a Manager. Any additional work or additional responsibility should be compensated by way of an allowance.

To conclude, the Tribunal finds the Applicant has failed to prove his case and accordingly set aside both disputes.

The Tribunal is bound by the Terms of Reference which make no mention of Applicant’s frustration and bad faith on behalf of Respondent. We are simply to look into whether he should report to the Executive Director and whether he should be granted a particular salary scale. Going beyond this would take us to the threshold of *Ultra Petita*.

Applicant’s case is that of a non appointment that led to a frustration as a result of a legitimate expectation. But life’s journey cannot be tailor-made.

The IT sector no doubt is becoming a fast developing contributor to the economy. The Tribunal firmly believes that those who laid the founding stones for its development cannot permanently be left in the lurch. Mr Ashan Ashraf’s dedication and passion for the industry must be enlivened and hopefully recognized. We hope the National Computer Board (the Respondent) will take note of it.



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**Rashid Hossen**  
**Acting President**

.....  
**Binnodh Ramburn**  
**Member**

.....  
**Masseelamanee Goinden**  
**Member**

**Date: 29<sup>th</sup> May, 2008**