

PERMANENT ARBITRATION TRIBUNAL

AWARD

RN 933

Before:

Rashid HOSSEN	-	President
Binnodh RAMBURN	-	Member
Rajendranath SUMPUTH	-	Member

In the matter of:-

**Irrigation Authority Staff Association
And
Irrigation Authority**

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

Mr. R. Peeroo, of Counsel, appears for the Applicant.

Mr. S. Bhuckory, of Counsel, appears for the Respondent.

The points in dispute are:

1. **“Whether the post of Administrative Assistant should be filled as recommended by the PRB Report 2003(Errors and Omissions), or otherwise.”**
2. **“Whether the post of Investigation Research Specialist should be filled following resignation of the holder of the post since 01 September 2005, or otherwise.”**

In its Statement of case, the Applicant avers as follows:-

(1) Post of Administrative Assistant

- The Pay Research Bureau in its report on “Errors, Omissions & Clarifications” of 2004 has recommended the creation of two grades of administrative cadre.
 - (i) **Head of Administration and**
 - (ii) **Administrative Assistant** to be recruited among candidates possessing a post “A” level Degree in Administration or Management or an alternative qualifications acceptable to the board.
- **The post of Head of Administration had already been filled.**
- The scheme of Service for the post of Administrative Assistant (AA) was approved by the Ministry of Civil Service Affairs and Administrative Reforms and approval for advertising same internally was obtained from the Ministry of Agriculture, Food Technology & Natural Resources.
- The post was advertised internally at the Irrigation Authority on 24 February 2005 with closing date, the 4 March 2005.

Four candidates have applied for this post and the qualifications possessed by each one together with their present status are shown at Appendix 4.

- In March 2005, **Candidate Number 2** (namely Mr. Anauth) had served a “*mise en demeure*” upon the Irrigation Authority ordering the authority to amend the scheme of service and to insert a “*First in take note*” so that he may be eligible for consideration for this post.
- By letter dated 11 April 2005 Ref. PB 40/IT under the signature of **Mr. D. Chan Kan Cheong**, Assistant Solicitor General, Management was informed that Candidate **Number 2** namely Mr. Anauth was not qualified for the above-mentioned post and that there was no legal obligation to amend the scheme of service for the post of Administrative Assistant.
- The qualifications of candidates Number **2** and Number **3**, namely Mr. Maheshwar Anauth and Mr. Jugdish Purmessur respectively were referred to the **National Accreditation and Equivalence Council (NAEC)** in order to be considered as an alternative to the degree in Management prescribed by the Pay Research Bureau.
- As per advices received from the **Tertiary Education Commission (TEC)** which had taken over from the **National Accreditation and Equivalence Council (NAEC)** the above-mentioned two candidates were not qualified as they do not possess the necessary qualifications as mentioned in the scheme of service of the post.
- **Candidate Number 2** had entered a dispute before the **Ministry of Labour & Industrial Relations** contending that the qualification of **Candidate number 4** namely **Mr. S. Goorapah** was not a degree in

management. The qualification of candidate number 4 was sent to the Tertiary Education Commission for equivalence.

- The TEC which had replied by letter dated 28th April 2006 that the degree of Mr. Goorapah could be considered as a degree in Management.
- The filling of the post of Administrative Assistant was taken up at the board of the IA on the 24th of August 2006 and it was resolved that the post would not be filled until the Permanent Arbitration Tribunal gives its award on this matter.

(2) Post of Investigation and Research Specialist (IRS).

The post of Investigation and Research Specialist (IRS) is on the establishment of the Irrigation Authority.

1. The substantive holder of the post was on leave without pay for a period of two years with effect from 1st September 2003.
2. Since the very beginning management was resisting to confer acting-ship on the ground that the General Manager and the Head of Irrigation Planning Unit were discharging the duties attached to the post.
3. Repeated requests were by the Irrigation Authority Staff Association to confer actingship down the ladder but in vain. The case was referred to the conciliation and mediation division of the Ministry of Labour and Industrial Relations in March 2004. After several unfruitful meetings the case was

- referred to the Industrial Relations Commissions. The Industrial Relations Commission gave its award in August 2004 and recommended that actingship should be conferred down the ladder.
4. As from 1st October 2004 actingship has been conferred to one Divisional Irrigation Operation and Maintenance Officer.(DIOMO)
 5. The substantive holder of the post did not join service after expiry of his leave without pay. He retired from service with effect from 4th September 2005. Since then several requests have been made to management to fill the post of **Investigation and Research Specialist (IRS)**.
 6. The Divisional Irrigation Operation and maintenance Officer (DIOMO) is still discharging the duties attached to the post of Investigation and Research Specialist (IRS).
 7. In January 2006 the case was referred to the conciliation and mediation division of the Ministry of Labour and Industrial Relations.
 8. In February 2005 management had informed the Irrigation Authority Staff Association of its intention to amend the scheme of service for the post of Investigation and Research Specialist with a view to lay emphasis on monitoring, evaluation and training of farmers. Management had also intimated its intention to abolish the post Investigation and Research Specialist and create the post of Irrigation Agronomist.
 9. The Irrigation Authority Staff Association is not agreeable to the proposal of Management on the following grounds:
 - The existing scheme of service makes provision for training farmers.
 - Some of the duties as mentioned in the scheme of service for the post Investigation and Research Specialist is directly linked to monitoring and evaluation. It suffices for the immediate supervising officer to put his officer to task.

- The position of the post of irrigation Agronomist on the organigram is not known.
10. The Irrigation Authority Staff Association has proposed that the post be filled and amendment to the scheme of service can be brought about later as it has been the case for other posts.
 11. Mention is made earlier about the matter being referred to the conciliation and mediation division of the Ministry of Labour and Industrial Relations.
 12. Management had informed the conciliation and mediation division of the Ministry of Labour and Industrial Relations that the board has decided not to fill the post.
 13. Such a decision is arbitrary. The Irrigation Authority Staff Association has reasonable grounds to believe that management is using the delaying tactics to favour certain officers at a later stage.

Statement of Case of the Irrigation Authority (IA)

The Irrigation Authority is a body corporate and is entrusted by law to implement and manage irrigation projects.

Post of Administrative Assistant

- 1.0 The Pay Research Bureau in its report on "Errors, Omissions and Clarifications" of 2004 has recommended the creation of a grade of Administrative Assistant at the Irrigation Authority.
- 2.0 Scheme of service of the post was drafted and on approval by the Irrigation Authority Board was forwarded to the Ministry of Civil Service Affairs & Administrative Reforms for final approval.
- 3.0 The post of Administrative Assistant (AA) was advertised February 2005.
The following officers of the Authority had applied for the post:
 - (i) M. Anauth(Personal Officer)
 - (ii) J. Purmessur (Higher Executive Officer)

- (iii) Y. Dulthummun(Executive Officer)
- (iv) S. Goorapah(Senior Internal Controller)

Only two of the candidates (i.e. Mrs Y. Dulthummun and Mr. S. Goorapah) possesses the qualifications as mentioned in the scheme of service of the post.

Two of the candidates (Messrs M. Anauth and J.Purmessur) did not possess the qualifications as stipulated in the scheme of service for the post. Advice of the National Accreditation and Equivalence Council (NAEC) was sought on the issue and the Tertiary Education Commission (TEC) had informed that the qualifications of both candidates were not equivalent to that required for the post, i.e. a Degree in Administration or Management.

4.0 In March 2005, Mr. M.Anauth had, through its legal adviser, served a '*mise en demeure*' upon the Irrigation Authority ordering the Authority to amend the scheme of service and to insert a '*first intake*' note. Advice of the State Law Office had been sought and the latter had informed that there is no legal obligation to amend the scheme of service for the post of AA.

5.0 Mr. M. Anauth was contending that the Senior Internal Controller was not qualified for the post. Advice was also sought on the matter and the TEC has confirmed that the Senior Internal Controller is qualified for the post. Mr. M. Anauth has also declared dispute at the Ministry of Labour, Industrial Relations and Employment, contending that the scheme of service be amended to include a '*first intake*' note so as to absorb him the post. The dispute has not yet been settled.

6.0 The Irrigation Authority Staff Association had declared an industrial dispute at the Ministry of Labour and Industrial Relations regarding the filling of the

post of AA. The Association has pointed out that the post was advertised in February 2005 and management has been taking much time in order to carry out interview of candidates while other post, such as Clerical Officer, has already been filled. Mrs Y. Dulthummun and Mr. S. Goorapah are members of the Association.

The Irrigation Authority Employees Union had declared an industrial dispute at the Ministry of Labour and Industrial Relations, contending that the scheme of service of AA be amended to make provision for experience in Administration/Management so as to absorb seniormost staff of the Administrative department. Mr. M. Anauth is a member of the Union.

7.0 The Higher Executive Officer and the Personnel Officer had acted as Secretary of the Authority earlier and the Personnel Officer had acted as Head of Administration for period 08.05.2006 to 23.06.2006.

8.0 The matter was reported to the Board at its meeting held on 24th August 2006 and it was resolved that the filling of the posts of Administrative Assistant be frozen temporarily until the industrial dispute is settled and the report of the MAB is received.

POST OF INVESTIGATION/RESEARCH SPECIALIST

1.0 The holder of the post of Investigation/Research Specialist (IRS) was granted leave without pay for a period of 2 years as from 1st September 2003. He resigned from his post with effect from 1st September 2005. Mr. K.C.S. Kong Thoo Lin, Divisional Irrigation Operation and Maintenance Officer at the Authority, has been entrusted with the duties of the post since 4th October 2004.

- 2.0 The Irrigation Authority Staff Association has declared industrial dispute at the Ministry of Labour as to whether the post of IRS should be filled following resignation of the post holder.
- 3.0 Management has decided not to fill the post of IRS for the time being, as it is envisaging to amend the scheme of service of the post so as to make more emphasis, amongst others on training and evaluation. The scheme of service would be streamlined to suit IFAD and existing requirements of the Authority. The dispute was between Mr. V. Thakoor and the Irrigation Authority and the Irrigation Authority denies paragraph 3 of the statement of case as regards the Post of Investigation/Research Specialist in as much as the request were made by Mr. Thakoor and not by Irrigation Authority Staff Association.
- 4.0 At the meeting of the Irrigation Authority Board held on 24th August 2006, it was resolved that the post of IRS be freezed temporarily as there may be change in the structure of the Irrigation Authority which may be merged with other parastatal institutions.
- 5.0 The scheme of service of Investigation/Research Specialist is found in the document marked 'A'.
- 6.0 As regards paragraph 4 and 5 of the statement of case of the Irrigation Authority Staff Association, the date 01/10/04 should read 04/10/04 and the date 04/09/05(in paragraph 5) should read 01/09/04(Doc 'B & C').

Testimonial and Documentary Evidence

Mr. Sudesh Kangloo, Safety and Health Officer and representative of the Union, stated under oath:-

- The Management of the Irrigation Authority (IA) took the decision not to fill the post of Administration Assistant (AA) and of the Investigation and

Research Specialist (IRS) because there were arbitration matters of the IA before the Tribunal and before the Ministry of Labour, Industrial Relations and Employment.

- These cases save those regarding the AA and the IRS have now been settled.
- The Board of the IA at its meeting of 24 August 2006 decided to freeze the post of the AA temporarily until the industrial dispute is settled and the MAB Report is received.
- The Errors, Omissions and Clarifications of 2004 of the PRB Report and the PRB Report of 2008 recommended the filling of the post of AA.
- The letter dated 3 April 2007 from the Ministry of Agro Industry and Fisheries mentions that there is no need for an additional post of AA. It does not raise the question of existing post. Hence, the Ministry has no objection for the filling of existing posts.
- The Errors, Omissions and Clarifications of 2004 of the PRB Report recommends the creations of the post of Head of Administration and this post has eventually been filled. The same Report mentions that the Head of Administration needs the necessary back up. There is no back up because the post of AA has not been filled up to now.
- As regards the post of IRS, this post also needs to be filled.

The witness, under cross examination, concedes that:-

- The PRB Report 2008 recommends the creation of the post of Agricultural Economist in the new Unit but nowhere it has mentioned the abolition of the post of IRS.
- Every budgetary dotation for the IA emanates from the parent Ministry. It must have the necessary funds to fill posts.
- The Ministry has nowhere made mention not to fill vacancy of AA.

- It is not true to say that the IA does not have the means for the funding of certain grades recommended in the PRB Report.
- The recommendation of the PRB for the filling of the post of AA forms part of the PRB Report which has been accepted *in toto* by the Government which has provided the necessary funds of its payment in the current budget.
- Post whose fund is higher and which has been recommended by the PRB has been filled.

Mr. Datakarran Goburdhun, Head of Administration, testified as follows:

- The IA does not carry out research in itself but is more concerned with project, evaluation and monitoring and based on the submission of Management to the PRB the filling of the post of IRS was not entertained. Management was expecting the PRB to come with a proper recommendation. So the PRB Report of 2008 has recommended a different Unit – the project monitoring and evaluation Unit in place of the Investigation/Research Cell (headed by the IRS).
- For this new Unit, the PRB has recommended a new post – the Agricultural Economist – who would be performing the core part of the duties that would be attached to this Unit. The Board has taken cognizance of the PRB recommendation and has decided that the post of IRS cannot be filled. The IA is proceeding with the preparation of the Scheme of Service of the new Agricultural Economist who would be posted to this new Unit. The IA will be proceeding to recruit someone within the Unit.
- By the letter of 22 July 2008 (from the parent Ministry) it is meant that there is no need of filling the existing post of AA. Based on this letter, the Board has decided to make no provision for fund for this post.

- Given that the post of AA was recommended in the Errors and Omissions of 2004 of the PRB Report, provision was already made by Management in its budget for this post.
- After getting all the clearances, the post was advertised in February 2005. Four applications were received and then there were disputes among the people who had applied. The Board decided to freeze the post temporarily.
- In December 2006, the Board again decided to keep the post in abeyance and in February 2007 an attempt was made to call for interview from people who are qualified for the post. Afterwards a letter dated 5 February 2007 was received by the IA from the Ministry ordering to keep in abeyance the filling of the post.
- Another letter dated 3 April 2007 from the Ministry followed after the MAB Report and the dispute instructing not to proceed at all with the filling of the post.

The Witness under cross-examination conceded that:-

- For quite some time there has been no dispute with the IA with the exception of the present one.
- The MAB Report never became official and nobody knows about its fate. In spite of the MAB Report the posts of IRS and AA are still on the establishment of the IA.
- There is a token vote for these posts of IRS and AA just to keep the post living.
- The PRB Report of 2008 maintains the post of AA and recommends the filling of the post. It also does not abolish the post of IRS.

- The post of Administrative Assistant was created to back up the important post of Head of Administration. The post of Head of Administration has been filled.
- The letter of 3 April 2007 does not mention the freezing of the existing posts of AA and IRS. It speaks only of the creation of an additional post of AA.
- Mention in the PRB Report has been made of the new post of Agricultural Economist. The draft scheme of service for this post is being worked out with the intention to fill the post and provisions have been made for its funding.
- He is aware that Government has expressed its intention to implement *in toto* the PRB Report of 2008. The PRB Report of 2008 has maintained the post of AA.
- In the light of the protests and the disputes that were coming to the IA, Management in its representation informed the PRB that it was getting many problems to fill the post. The PRB at this meeting decided that it is going to take necessary action so that the post would be filled, with a provision that people who are in service or who have longer years of service may have a chance of career prospect.
- He agrees that it is fair for people who have worked for so many years for the IA to have the legitimate expectation of at least to be promoted to the post of AA.
- The IA is moving ahead for the creation of a Unit to look after monitoring, evaluation of irrigation in view of the above representation and for this reason the post of IRS has not been filled.
- It is mentioned in the PRB Report that the IA has to create the post of Agricultural Economist who is going to take the core function of this new Unit.

- The new Unit has not yet been created.
- Management was trying to make provisions with regard to the post of AA in view of the recommendation of the PRB. Afterwards the allocation of funds was removed by the Board based on the letter of 2 July 2008 from the parent Ministry which said that the post should not be filled.

Under re-examination the witness affirmed that the letter of April 2007 whereby there is mention of an additional post of AA, it has been interpreted by the Board that it meant that there is no need for an AA in the administrative structure of the IA.

Mr. Bhuckory submitted that:-

- As far as the IRS is concerned there is clear evidence on record that there is a new Unit that has been now adopted by the PRB and that the needful has been done by Management to fulfill same. It would serve no useful purpose to fill the existing IRS post for the time being because it exists only on paper because in a short or medium future it is going to be obsolete.
- As far as the post of AA is concerned, the IA has to stand by the directives of the Ministry because it is the Ministry which provides the funds.
- He further submitted that to the extent that there has been no implementation in any way or whatsoever, the PRB is not binding because even during the course of the pre-PRB consultations the decision has been kept in abeyance. He adds that there was the MAB Report and that the matter was deferred to be considered after the PRB and once the PRB was published, the Ministry came up with a letter to say not to proceed with the filling of these posts. There is no offer as such that has been made that could have been deemed to be accepted and the matter has a binding contractual effect between the employer and the employee.

In his submission, Mr. Peeroo states that:-

- The letter of 3 April 2007 speaks only of the parent Ministry's objection to the creation of an additional post. Nowhere, be it in the statement of case of the IA nor in any document produced by the IA or document emanating from the Ministry of Agro Industry has it been said clearly that the post of AA or the post of IRS should not be filled.
- If there was no need for either the post of AA or of the post of IRS, the PRB Report of 2008 would have clearly stated that this post should be restyled, abolished or there would have been some recommendations with regard to the post.
- It is important to know that in the PRB Report of 2003 there was no post of AA. The post was created in the 2004 Errors and Omissions of the PRB Report and was accepted by the Government.
- From the evidence of Mr. Goburdhun (witness of the Respondent), the IA has even prepared estimates about the filling of the post.
- When the Ministry says "no", it means we must not create an additional post, but it does not say not to fill the existing post.
- Mr. Goburdhun himself agrees that people who have been working for many years at the IA have the legitimate expectation to be at least promoted to the post of AA.
- The recommendation of the PRB is binding. There has been non implementation of the recommendation. No valid reason has been put forward by the IA that the post should not be filled.
- The post of Head of Administration has been filled. It is clear in the recommendation of the PRB Report that this post of Head of Administration should be backed up by people who would be posted as AA. By not filling

the post of AA, this creates an administrative shortcoming of anomaly. It is like a general without an army. The Head of Administration needs the backing of the AA to do his work properly. This is in the interest of the IA.

- With regard to the post of IRS, some clarification has been given to the Tribunal about the creation of a Unit, recommended by the PRB Report of 2008. However, this PRB Report has not said clearly that this post should be abolished.

After careful consideration of the oral and documentary evidence adduced and the submissions of Counsel, the Tribunal notes and comments as follows:-

1. The "Errors, Omissions and Clarifications of 2004" of the PRB recommend the creation of the grades of (a) Head of Administration and (b) Administrative Assistant which did not appear in the PRB Report of 2003. Subsequently, the post of the Head of Administration has been filled.
2. The post of AA was advertised internally on 24 February 2005 by the IA. Following the applications by candidates, there were contentions among the candidates themselves particularly on the issues of qualifications and the schemes of service.
3. On the other hand, the Irrigation Authority staff Association feeling that the Management has been taking too much time to carry out the interview of candidates, declared an industrial dispute by way of letter dated 30 January 2006 addressed to the Ministry of Labour and Industrial Relations.
4. The Ministry of Labour and Industrial Relations by way of letter dated 6 September 2006 referred the dispute to the Permanent Arbitration Tribunal for determination.

5. In the meantime, the matter was reported to the Board of the IA at its meeting held on 24 August 2006 and it was resolved that the filling of the posts of Administrative Assistant be frozen temporarily until the industrial dispute is settled and the report of the MAB is received.
6. The Board of the IA at another meeting on 13 December 2006 took the decision of keeping the filling up of the posts of AA in abeyance. However, in February 2007 an attempt was made to call for interview from candidates who are qualified for the posts. A few days after in February 2007 itself and in April 2007 following letters received from the Ministry of Agro Industries and Fisheries, the IA decided not to fill the post of AA.
7. Prior to the 'Errors, Omissions and Clarifications of 2004' of the PRB, there were no post of AA and of the Head of Administration at the IA. As mentioned earlier, the post of Head of Administration has been filled and the Tribunal fails to understand how the Head of Administration is operating in the absence of the AA. The Tribunal concurs with Counsel for the Applicant that the Head of Administration needs the necessary back up from the AA so that he can perform his work properly.
8. The Tribunal is of the considered view that the post of the AA should be filled. The IA itself had taken the decision to fill the post and budgetary provision was made to this effect. Clearances were even obtained from the parent Ministry for the filling of the post. Furthermore, the PRB of 2008 maintained the post of the AA. It did not recommend its abolition or made other recommendation regarding this post.
9. The Government has approved the implementation of the PRB Report 2008 *in toto*. The Government has taken the necessary measures for its findings.
10. Employees who are in service for long years should be given the chance of career prospects. They should have the legitimate expectation for promotion

to higher posts. One of the avenues for them is the filling up of the posts of AA in the IA. The Head of Administration needs the necessary assistance and back up. It is in the interest of the IA not to cause frustration among its employees particularly those who have long years of service. Harmonious industrial relations should prevail for the good functioning of an organization.

11. The PRB in 2004, having recommended the creation of this post and having maintained it in 2008, the Tribunal finds no reason that it should go against the recommendation of the PRB in as much as the Government has approved the implementation of the PRB Report without reservations. It should also be pointed out here that there is no clear evidence that the parent Ministry is against the filling of this post.
12. As regard the post of IRS, it is not necessary that it be filled for the time being.
13. The IA has averred, and it has not been denied, that it does carry out research in itself but is more concerned with projects, evaluation and monitoring. Representations were made to the effect that before the PRB the vocation of the IA is not to undertake research works in the field of irrigation but to implement irrigation projects. Hence the PRB itself recommended as follows:

Recommendation 8

18.29 "We recommend the setting up of a Project Monitoring and Evaluation Unit to be responsible for the monitoring and evaluation of irrigation projects and to take over the core functions of the Investigation/Research Cell."

14. The PRB also recommends the creation of a grade of Agricultural Economist. The Respondent also avers, and again it has not been denied, that the Agricultural Economist is to take the core function of this new Unit. "The needful is being done by the IA to fill this post" is part of the averment of the IA. Although the PRB Report of 2008 has not recommend the abolishing of the post of IRS, the Tribunal, in the light of all the above, finds no compelling reason that this post should be filled for the time being.

The Tribunal awards as follows:-

Dispute No 1

"The post of Administrative Assistant should be filled as recommended by the PRB Report 2003 (Errors & Omissions).

Dispute No 2

The case for this applicant has not been made out. The dispute is accordingly set aside.

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Rashid Hossen

President

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Binnodh RAMBURN

Member

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Rajendranath SUMPETH

Member

Date: 28 November 2008