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The Gazette of the Democratic Socialist Republic of Sri Lanka
EXTRAORDINARY

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PART I : SECTION (I) — GENERAL

Government Notifications

My No. : IR/15/36/2009. *Case No.* A 3354

Ref. No. : IR/15/36/2009.

THE INDUSTRIAL DISPUTES ACT (CHAPTER 131)

THE award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between Mr. P. G. Seneviratne, No. 04, Gajabapura, Kollannawa of the one part and Ceylon Petroleum Storage Terminals Limited, Installation, Kollannawa of the other part was referred by order dated 10.11.2010 made under section 4(1) of the Industrial Disputed Act, Chapter 131, (as amended) and published in the *Gazette* of the Democratic Socialist Republic of Sri Lanka Extraordinary No. 1680/36 dated 19.11.2010 for settlement by Arbitration is hereby published in terms of Section 18(1) of the said Act.

V. B. P. K. WEERASINGHE,
Commissioner of Labour.

Department of Labour,
Labour Secretariat,
Colombo 05,

13th August, 2013.

1 A - G 18159 — 165 (2013/08)

This Gazette Extraordinary can be downloaded from www.documents.gov.lk.

In the matter of an Industrial Dispute

BETWEEN

Mr. P. G. Seneviratne,
No. 04, Gajapura,
Kollannawa.

and

Ceylon Petroleum Storage,
Terminals Limited,
Installation,
Kollannawa.

AWARD

01. The Hon. Minister Labour and Productivity Promotion by virtue of the power vested in him by Section 4(1) of the Industrial Disputes Act, Chapter 131 of the Legislative Enactments of Ceylon (1956 revised edition) as amended by Acts, 14 of 1957, 62 of 1957, 4 of 1962 and 39 of 1968, read with Industrial Disputes



(Special Provisions) Act, No. 37 of 1968, appointed me as the Arbitrator by his Order dated 10.11.2010 and referred the dispute between the aforesaid parties to me for settlement by arbitration.

02. The matter in dispute between the aforesaid parties is

“whether Mr. P. G. Seneviratne who is presently employed as a security Officer Grade B-1 of the Ceylon Petroleum Storage Terminals Limited is entitled to be appointed to the Grade A-7 with arrears of salary in terms of the recommendations of the Political Victimization Committee which was implemented in respect of the members of the staff of the said establishment as from 16.06.2005 and if so entitled what relief he should be granted by the said company”

03. Appearances :

Mr. P. Liyanage Attorney-at-Law appeared for the workman assisted by Mr. P. Vimal Jayasuriya Attorney-at-Law. Miss. Thavisha Jayasinghe Attorney-at-Law from Attorney General's Department appeared for Ceylon Petroleum Storage Terminals Limited.

At the inquiry conducted by me, Mr. P. G. Seneviratne, workman commenced the case and gave evidence. His evidence in chief was by way of an Affidavit. He was cross examined by the Learned Counsel of the Respondent company and thereafter he was re-examined by his counsel. His case was concluded marking the documents A to U and written submissions were tendered thereafter with marked documents. The Respondent Company led the evidence of Mr. R. A. A. Sisira Jayantha Perera Human Resources Assistant, Mr. R. P. B. Purana Gedara Assistant Secretary Cabinet of Minister and closed the case marking documents R1 to R19. Written submissions were tendered by the Respondent along with the marked documents R1 to R19.

04. Facts in brief :

The position of Mr. P. G. Seneviratne is that the Political Victimization Committee has recommended promotion to him to Grade A-7. The respondent company maintains that the Political Victimization Committee did not recommend promotion to him to Grade A-7 but to Grade B-1 and it was accordingly made.

05. Issues to be determined :

- (i) What was the recommendation of the Political Victimization Committee in respect of Mr. P. G. Seneviratne Security Officer Grade B-1 ?

- (ii) Has the Respondent Company implemented the recommendation in respect of Mr. P. G. Seneviratne ?

- (iii) Is Mr. P. G. Seneviratne entitled to any relief and if so to what relief?

06. Analysis of evidence of the Workman :

The burden is on the Workman who claims that Political Victimization Committee has recommended promotion to him to Grade A7 to prove that such a recommendation was made by the Political Victimization Committee. He commenced the case and stated in his evidence in Chief by way of Affidavit - Pages 37-39 of the Case Record, *inter alia*, as follows :

- (i) He made an Application to the respondent for promotion as he heard promotion had been given to employees by the Respondent credited with three years' service ;
- (ii) Although he was called for interviews he was not promoted and promotions were given to other who had less qualification than him ;
- (iii) During the period of his service he had performed duties in Grade A6 & A7 in the absence of permanent Officers on those posts ;
- (iv) The Political Victimization Committee appointed on 16th of June 2005 had offered two promotions ;
- (v) He made an application for promotion but he was offered one promotion that is Grade B1 ;
- (vi) He has been employed for more than 10 years. He has made an application for promotion to Grade A7 as he has the maximum qualification for that post ;
- (vii) He has more qualifications than (08) eight employees who were to be given promotion in Grade A6 & A7 ;
- (viii) The Security Manager had recommended him but he was not given the promotion to Grade A7.

Under cross examination he had said that he did not remember the date he made an application for the promotion and said further that he would produce the application on the next date. Pages 63 & 64 of the proceedings of 14.11.2011. On the next date he did not produce the application, but stated that he was called for interview based on

his application and marked the said letter as 'H'. It came to light that 'H' was in reference to an application made by him to the Ceylon Petroleum Corporation and not to the Respondent Company. To a question posed by me, he admitted that he was not called for interviews by the respondent Company. It is clear from the foregoing that he has not applied to the respondent Company for promotion. this allegation against the Respondent in relation to his promotion therefore fails.

His evidence that he had been acting for Grades A6 & A7 cannot be accepted as according to leave chits marked by him as J. K. L. & M, he had only covered the duties when officers were on leave.

In his evidence-in-chief he has not stated that Political Victimization Committee has recommended promotion to Grade A7 to him. Undercross examination he has stated as follows :

Q: I put it to you that the Political Victimization Committee has not recommended A7 to you and therefore you can't ask for A7 promotion from the respondent ?

A: At that time I was recommended to A7 by the Political Victimization Committee but I was given Only B1.

Q: Where is it stated that Political Victimization Committee has recommended A7 to you ?

A: The Political Victimization Committee told me that I have been recommended.

Q: When did the Political Victimization Committee tell that to you ?

A: During the oral conversation.

Q: Were you given it in writing anytime ?

A: No.

Pages 74 & 75 of one proceedings of 09.12.2011.

His evidence on this score would appear to be false. He has failed to prove that he was recommended by the Political Victimization Committee for promotion to Grade A7. The position taken up by the workman that he was

recommended by security Manager for promotion cannot be accepted when viewed in the light of the document F(c) which says "he is to be considered for promotion". The workman who was appealing for promotion has admitted that he wrote R5 to the Personnel Manager on 09.08.2007. This letter is offensive and in a threatening tone *vide* R5 (a). His approach would appear to be wrong in that his letter is couched in vituperative language. His letter dated 09.08.2007 has been replied by the Personnel Manager on 29.08.2007 and marked as R6. These two letters R5 & R6 are self explanatory.

07. Analysis of the evidence of the Respondent Company.

Mr. A. A. Sisira Jayantha Perera Human Resources Assistant in his evidence has stated, *inter Alia* as follows :

- (i) The workman cannot says that he had been acting in Grade A6 & A7 relying on R9 to R12 (Leave chits marked by the workman as J,K,L, & M respectively) ;
- (ii) Whenever a worker goes on leave his work should be covered by another worker and that worker should be in the same Grade or in Higher Grade. This duty can be done only for that period of leave ;
- (iii) On the basis R9 to R12 (Leave Chits J, K, L & M respectively) he cannot claim promotion to Grade A6 and A7. Page 96 of the case record. Proceedings of 22.08.2012 at page 05 ;
- (iv) There were three vacancies for Senior Assistant Security Officer Grade A7. 23 came for the interview. This workman was not selected as he was not suitable when compared to others. This workman has scored 40-1/2 marks while the other employees who were selected have scored 61 1/2 marks, 60 1/2 marks and 59 marks ;
- (v) His position according to marks scored was 10. He has produced as R16 the scheme of marking ;
- (vi) He has not got Grade A7 from the interview or from Political victimization Committee.

Pages 01 to 08 of the proceedings of 14.09.2012. Pages 98-105 of the case record.

Under cross examination he has stated that Political victimization Committee has recommended this workman to be promoted to

Grade B1. To a specific question from me “was he given B1? His answer was ‘Yes’ It was put to him under cross-examination that Political victimization Committee recommended to this workman promotion to Grade is A7 but the company purposely did not give him the promotion, he denied that. He has in re-examination stated that the company had given the promotions recommended by the Political victimization Committee.

Mr. P. B. Purnagedara Assistant Secretary of the Office of Cabinet of Ministers gave evidence and produced the report of the Political victimization Committee as R17 which he said was received on 15.06.2005 at the office of the Cabinet of Ministers. I find in R18 the letter of 15.06.2005 to Secretary to the Cabinet from Secretary Ministry of Power and Energy the date stamp 15.06.2005 of the office of Cabinet. He has stated that this workman has been recommended for promotion to Grade B1 and his name in the report was marked as R17(a). It was put to him that this report was not the original. He has said that 17 is the original. In para-20 of the written submissions of the workman it has been stated that R17 is undated which shows it is not the original, but it was prepared for this case. This statement would appear to be unfair and unkind for the following reasons :

- (i) The marking of the report R17 was not objected to at the time of marking ;
- (ii) R18 and R19 can be taken as supportive evidence of the authenticity of the report R17 ;

- (iii) The Report R17 in respect of 1020 employees has been signed by three signatories in every page. The Report R17 runs from pages 289 to 397 in the case record (108 pages in all) ;
- (iv) The report does not bear the date. For this reason it cannot be said that it is not authentic. The objection in relation to the report is rejected by me.

08. My determination of the issued is as follows :

- (i) The Recommendation of the Political Victimization Committee in respect of Mr. P. G. Seneviratne Security Officer Grade B-1 was that he be promoted to Grade B1 *vide* R17 (a) ;
- (ii) The Respondent Company has implemented the recommendation in respect of Mr. P. G. Seneviratne ;
- (iii) Mr. P. G. Seneviratne is not entitled to any relief.

09. Taking into consideration the totality of the evidence led by both sides with particular reference to the written submissions together with marked documents tendered by both sides, I hold that Mr. P. G. Seneviratne does not merit any relief. I therefore, make No. award and go a step further to state that this award is Just and Equitable.

V. VIMALARAJAH,
Arbitrator.

12th June, 2013.

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