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EXTRAORDINARY

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PART I : SECTION (I) — GENERAL

Government Notifications

My No. : IR/22/08/2005.

REF No. : IR/22/08/2005.

THE INDUSTRIAL DISPUTES ACT (CHAPTER 131)

THE award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between Mr. S. D. Premaratna, 2nd Lane, Paragahapitiya Watta, Kuliyaipitiya of the one part and Sri Lanka Transport Board, No. 200, Kirula Road, Colombo 05 of the other part was referred by order dated 19.11.2009 made under section 4(1) of the Industrial Disputed Act, Chapter 131, (as amended) 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,

01st April, 2013.

In the matter of an Industrial Dispute

BETWEEN

S. D. Premaratna
2nd Lane,
Paragahapitiya Watta,
Kuliyaipitiya.

Case No. A - 3305

and

Sri Lanka Transport Board,
No. 200,
Kirula Road,
Colombo 05.

The Hon. Minister by virtue of powers 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 No. 14 of 1957, 4 of 1962 and 39 of 1968 appointed me as Arbitrator by his order dated 19th November 2009 and referred the following dispute to me for arbitration.

THE AWARD

The matters in dispute has arisen between (1) S. D. Premaratna of 2nd Lane, Paragahapitiya Watta, Kuliapitiya of the one part (Applicant) and the Sri Lanka Transport Board (SLTB) of No. 200, Kirula Road, Colombo 05 of the other part (Respondent).

The matter in dispute before the aforesaid parties is :

“Whether any injustice was caused to Mr. S. D. Premaratna due to the imposition of penalties by order dated 26.12.1995 of the Deputy General Manager (Technical) of the then Sri Lanka Central Transport Board while having exonerated him of all the charges framed against him in the charge sheet dated 11.11.1993 while he was serving as the Engineer in charge of the Udabaddawa Regional Workshop of the Board and if any injustice was caused, and to what relief he is entitled to.”

The case was taken up on 18 days from 02.06.2010 and the parties agreed to come to a settlement. The Commissioner General of Labour was also consulted and was made aware of the proceedings that had taken place (P 228). The settlement which was arrived at was to be implemented on the following conditions :-

The following are the charges in brief

01. The first charge is an allegation against the applicant of using a letter purporting to be from the Nikawaratiya Multi Purpose Corporative Society (MPCS). This charge was not proved.
02. The 2nd charge he was found not guilty.
03. Theft of a cupboard, appears to have been removed with permission.
04. Movement of the trolley from the workplace, which was removed, appears to have been done with the permission of the security division.
05. Caused a loss of Rs. 1,500 to the Board by the unauthorized disposal of a cupboard.
06. Misusing the letter head of the Nikawaratiya MPCS for an unlawful purpose. This charge was not proved.

The applicant was found not guilty of the first charge and conclusion arrived at was that he was therefore not guilty of the other charges.

The case which was taken up for hearing on 02.06.2010 was held on 18 days after which the parties agreed to arrive at a settlement on the following terms and conditions :-

- (a) The applicant agreed to limit his claim to a sum of Rs. 25,000 which the Respondent Board agreed to pay.
- (b) The applicant agreed to make no further claims regarding this case No. 3305 to any other forum.
- (c) The applicant states that the charge sheet issued to him on 11.11.1993 which also notes certain punishments, are not the result of an order made by an approved legal body. These remarks stated above are superficial.
- (d) The applicant disclaims any right to make further claims arising out of case No. 3305.
- (e) This is to be considered a full and final payment to the applicant.

The Service record of the applicant

He was appointed Grade IX apprentice in the SLTB on 01.08.1971, on 01.08.1976 appointed Foreman Grade VIII. In 07.03.1998 was appointed Acting Engineer SLTB and promoted as Engineer and was attached to the CTB Depot, Kurunegala.

Halfway through the proceedings, the parties agreed to come to a settlement in order to expedite the matter. The applicant was to receive a sum of Rs. 25,000 from the Respondent SLTB which payment was to be a once and for all payment which was made by cheque No. 365238 on 25.07.2012. He has acknowledge receipt of this which is embodied in the inside cover of the file and witnessed by the Arbitrator.

It was clear throughout the proceedings that this case had not followed a set uniform standard or pattern in holding its disciplinary inquiries and the manner of imposing punishments was subject to numerous procedural defects. The Assistant Commissioner of Labour has raised certain doubts in this matter.

It was observed that the service record of the applicant was not unblemished and he has been dealt with disciplinarily. The applicant also maintained that punishments imposed on him tended to be excessive and too harsh despite his holding an Executive Post of Engineer.

Inordinate Delay

On the charge sheet of 11.11.1993 the disciplinary order was made (6) six years later on 23.08.1999, that too, the letter had been prepared one year earlier on 04.06.1998. This inordinate delay would be prejudicial to the parties while keeping them in suspense for a long period.

The settlement arrived at by Premaratne the applicant and the Respondent SLTB of Kirula Road, Colombo 05 and the payment of Rs. 25,000 to the applicant is embodied as part and parcel of the award made on 27.02.2013.

This matter was also referred to the Asst. Commissioner of Labour Kurunegala (page 12) on 06.03.2000, who has brought out the following matters.

- (i) The Board has not followed hitherto accepted practices or precedents regarding the payments to be made on re-instatement after interdiction.
- (ii) In addition to the charges contained in the charge sheet additional charges have been added contrary to accepted practice and also refers to the possibility of losing the services of an experienced Executive Officer and Engineer.

Under these circumstances the Asst. Commissioner of Labour is of the view that the applicants case should be considered sympathetically (Page 11 - Page 21).

There are several instances when the applicant has been punished for various acts of misconduct. But what is striking is that these sentences vary in their gravity and there is no standard which has been set in imposing punishment. These punishments are subject to the vagaries of the officer imposing punishment. The disciplinary rules of the Board are enumerated under schedule "A". There are 34 acts of misconduct and under schedule "B" 11 acts of misconduct are not considered grave. There is also provision in schedule "E" for appeal against disciplinary orders to appellate authority. However non of these provisions have been correctly used in instilling discipline in this institution.

I consider this settlement as a just and equitable award.

W. G. DEEN,
Arbitrator.

27th February, 2013.

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