



ශ්‍රී ලංකා ප්‍රජාතාන්ත්‍රික සමාජවාදී ජනරජයේ ගැසට් පත්‍රය
අති විශේෂ

The Gazette of the Democratic Socialist Republic of Sri Lanka
EXTRAORDINARY

අංක 2045/35 - 2017 නොවැම්බර් මස 16 වැනි බ්‍රහස්පතින්දා - 2017.11.16
No. 2045/35 - THURSDAY, NOVEMBER 16, 2017

(Published by Authority)

PART I : SECTION (I) — GENERAL
Government Notifications

My No. IR/COM/01/S/2014/91.

In the matter of Industrial Dispute

THE INDUSTRIAL DISPUTES ACT, CHAPTER 131

Between

THE award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between Mr. J. G. Dharmasiri, 23Km post, Mahiyangana Road, Teldeniya of the one part and Ceylon Petroleum Storage Terminals Limited, Nimawa, Kolonnawa of the other part was referred by order dated 24.06.2015 made under Section 4(1) of the Industrial Dispute Act, Chapter 131 (as amended) and published in the *Gazette* of the Democratic Socialist Republic of Sri Lanka Extraordinary No. 1921/56 dated 02.07.2015 for Settlement by Arbitration is hereby published in terms of Section 18(1) of the said Act.

Mr. J. G. Dharmasiri,
23Km Post,
Mahiyangana Road,
Teldeniya.

of the one Part.

Case No. A-3605

and

Ceylon Petroleum Storage,
Terminals Limited,
Nimawa,
Kolonnawa,

of the other Part.

A. WIMALAWEERA,
Commissioner General of Labour.

AWARD

Department of Labour,
Labour Secretariat, Colombo 05.
11th November, 2017.

1. The Honourable Minister of Labour by virtue of the powers vested in him by Section 4(1) of the Industrial



Dispute Act, Chapter 131 of the Legislative Enactments of Ceylon (1956 Revised Edition) as amended by Acts Nos. 14 of 1957, 62 of 1957, 4 of 1962 and 39 of 1968 (read with Industrial Dispute Special Provisions) Act, No. 37 of 1968 appointed me to be the Arbitrator and referred the dispute hereunder for settlement by arbitration, per his order dated 24 June, 2015.

2. The matter in dispute is as follows :

“Whether Mr. J. G. Dharmasiri who worked as an Electrician at the Kolonnawa, Nimawa Premises Engineering Bureau of the Ceylon Petroleum Storage Terminals Limited had been caused injustice by not being given the post of Senior Technician (Instruments) Grade C1 after his participation at the Trade Tests held on 08.12.2009 and 11.06.2010 for the appointment of person to that and if so what reliefs he is entitled.”

In behalf of applicant J. G. Dharmasiri, Mr. Gratian Silva, Represented while the respondent organization was represented by Mrs. Anuradha Jayawardena, Legal Officer.

Applicant filed documents marked A¹ to A⁷ and the respondent filed documents marked R¹ to R⁹

3. Applicant J. G. Dharmasiri, A C² Grade employee stated.

- a) That he joined Ceylon Petroleum Storage Terminals Ltd as an Electrical Technician, Grade C², on 7th May 1996.
- b) For the promotion to Grade C 1 termed Senior Technician (Equipment) his application was accepted and Human Resource Division referred him to a Trade Test.
- c) Trade Test was held on 8th December 2009 and altogether 3 candidates appeared : the test results indicated that he scored 60 marks, whereas other two secured 47 and 48 marks, this test results were rejected by the Human Resources Division.
- d) Management fixed another Trade Test on 11th June 2010, at which he scored 65 marks while the other two secured 55 and 60 marks. Again the Trade Test results were rejected by the Human Resources Division.
- e) For the 3rd time another Trade Test was fixed, but that was abruptly cancelled stating that elections were in the offing.

- f) The vacancy for the Grade I, position for which the Trade Test was intended, remains without filling the vacancy. In the meantime management appointed him to cover at the work of that post with effect from 08th June 2007, without any extra remuneration or appointing to the post although he was successful at Trade Test held on 8th December 2009 as well as 11th June 2010.

4. Respondent Organization, witness Niyas Ahamadu Munas, Deputy Human Resources Manager Stated -

- a) That he joined the institution and works as Deputy Human Resources Manager, was present at the Trade Test held on 8th December 2009 on instructions of Human Resources Manager.
- b) The Trade Test were conducted by Mr. K. R. Silva, Ass. Foreman and Mr. Sisira Wijerathne, Engineer, apart from him.
- c) Witness did not sign the results sheet, whereas other two examination signed. Witness abstained from signing as he felt that test was not done properly. Also he did not inform his superior in writing.
- d) Trade Test results were not released in consequence.

5. Residents' next witness, EARD Bandara, Manager Training and Productivity Development Stated.

- a) That he was attached to the Human Resources Division during June 2010 and was presents at the Trade Test held on 20th September 2010. The other two were Mr. P. Athukorala, the Manager, Engineering Services and Mr. I. M. Gamini Foreman (Equipment)
- b) That he did not sign the results sheet.

6. Respondents' next witness, Mrs. Srimala Pathberiya, Deputy Human Resources Management Officer stated -

- a) That she works at Human Resources Division from 2014.
- b) That she came to know that Trade Test was held on 29th September 2010, to which Mr. EARD Bandara and I. M. Gamini were present.

7. Respondents' next witness K. M. N. A. Fernando, Human Resources Manager stated that he joined the Human Resources Division, on 15th June 2013.

8. Respondents' next witness Mr. M. S. D. Shantha Kumara, Labour Officer, stated, he was present with the connected file of papers, concerning the inquiry at Labour Department.

9. My findings and observations are as follows -

- a) Trade Text for selection of the Senior Technician (Instrumental) were carried out by Technically qualified personnel on two occasions.

08th December 2009 - by Engineer Wijerathne, Foreman K. R. De Silva

11th June 2010 - by Manager Engineering Services, Athukorala and Foreman I. M. Gamini.

Representatives from Human Resources Division were presents in addition, who had no technical knowledge on the subject.

Besides, at this inquiry management failed to present any of the said technically qualified, personnel, who conducted the Trade Tests.

- b) The applicant at the Trade Test held on 08th December 2009 scored 60 marks, while the other two candidates scored 47 and 48 marks.

At the Trade Test held on 11th June 2010, applicant scored 65 marks, while the other two candidates scored 55 and 60 marks.

On both occasion, the applicant received higher marks.

- c) Although at Trade Tests, representatives of Human Resources Division were present, failed to sign or inform in writing to the Senior as to why the results sheets were not signed - evidence of Niyas Ahamadu Munas reveals, Human Resources Division officials only gave evidence.

- d) As from 08th June 2011, applicant was required to cover up the work of Senior Technician (Instrumental) which he is now requesting to regularize the position.

AWARD

I have examined the evidence tendered comprehensively and are satisfied that the applicant is eminently qualified and satisfied the selection criteria. In the circumstances I award that the applicant be appointed to the post of Senior Technician (Instruments) Grade I, with retrospective effect from of December 2009 and be paid arrears of salary due within 45 days, of publication of this award in the *Govt. Gazette*. This is just and a fair award.

P. NAWARATNE,
Arbitrator.

22nd September 2017.

11-1392