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# The Gazette of the Democratic Socialist Republic of Sri Lanka

## EXTRAORDINARY

අංක 2219/64 - 2021 මාර්තු මස 19 වැනි සිකුරාදා - 2021.03.19

No. 2219/64 – FRIDAY, MARCH, 19, 2021

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## PART I : SECTION (I) — GENERAL

### Government Notifications

My No.: IR/COM/02/2016/147

#### THE INDUSTRIAL DISPUTES ACT CHAPTER 131

THE award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between Mrs. D. M. P. D. Perera, No. 574/2, Halgahadeniya Road, Kalapaluwawa, Rajagiriya, Mr. G. H. M. Ananda, No. 225, A5, Walawwatta, Kesbewa, Piliyandala, Mr. H. Sunil Perera, No. 163/5/3, Jayagath Mawatha, Hokandara North, Hokandara, Mr. K. D. L. Somadasa, No. 272, 1<sup>st</sup> Lane, Samarakoon Mawatha, Thumbowila, Piliyandala of the one part and Ceylon German Technical Training Institute, No. 582, Galle Road, Mount Lavinia of the other part was referred by order dated 29.12.2017 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. 2052/20 dated 04.01.2018 for Settlement by Arbitration is hereby published in terms of section 18(1) of the said Act.

**B. K. PRABATH CHANDRAKEERTHI,**  
Commissioner General of Labour

Department of Labour,  
Colombo 05,  
20th February, 2021.



**In the matter of Insustrial Dispute**

Between

01. Mrs. D. M. P. D. Perera,  
No. 574/2, Halgahadeniya Road  
Kalapaluwawa,  
Rajagiriya.
02. Mr. G. H. M. Ananda,  
No. 225, A5, Walawwatta,  
Kesbewa,  
Piliyandala.
03. Mr. H. Sunil Perera,  
No. 163/5/3, Jayagath Mawatha,  
Hokandara North,  
Hokandara.
04. Mr. K. D. L. Somadasa,  
No. 272, 1<sup>st</sup> Lane, Samarakoon Mawatha,  
Thumbowila,  
Piliyandala

Case No. : A/02/2018

*Of the one part*

And

Ceylon German Technical Training Institute,  
No. 582, Galle Road,  
Mount Lavinia,

*Of the other part*

**Award**

1. The Honourable Minister of Labour and Trade Union Relations, and Sabaragamuwa Development by virtue of the 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 Nos. 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 by his order dated 29th December, 2017 and referred the dispute between the aforesaid parties to me for settlement by arbitration.
2. The matter in dispute between the aforesaid parties is -  
  
*"Whether D. M. P. D. Perera, G. H. M. Ananda, K. D. L Somadasa and H. Sunil Perera who had worked at the Ceylon German Technical Training Institute had been caused injustice by not being placed in the relevant post in accordance with letter No. DMS/C/I/PS/34 dated 29.09.2008 of the Department of Management Services and not being paid the arrears of salary and gratuity relevant to that post and if so, to what relief they are entitled."*
3. Mr. K. M. Saman Priyalal, Attorney at law appeared on behalf of the applicants, while Mr. Ajith Abeygunawardene, Administration and Human Resources Officer appeared on behalf of the respondent Institute.  
 Applicants marked document A. to A 63 whereas respondent institute marked R 1 to R 27A
4. Evidence by applicants.

**A. Mrs. Priyani Damayanthi Perera, Accountant Stated that -**

- She joined the Ceylon German Technical Training Institute on 04.03.1974 as a clerk, then promoted to the post of Book Keeper, Accountant Grade 5, Accounting Officer Grade 4, Accountant Grade 3B and Finally Accountant Grade 3A.
- After 37 years she retired on 21.09.2010 on reactive retirement age.
- According to the Dept. of Management Service, circular No. 30 issued on 29.09.2008 apply with retrospective effect from 01.07.2008. At the time of retirement she had been placed under the category of J. M. 1-1 whereas in terms of the said circular she should have been placed on H. M. 1-1 and paid arrears of salary due.
- When requested rectification of salary per Dept. of Management Services Circular No. 30, Manager Human Resources said that salary scales are payable only to those in service.
- However Mr. Manchanayake, Former Principal of the institute who retired on March, 2012 had been paid according to the said circular.
- Thereafter complained to the Asst. Commissioner of Labour, who requested payment of revised salary and gratuity by management failed to comply.
- Human Rights Commission took up the issue and after inquiry ordered management to rectify the anomaly, but did not adhere.
- After words Asst, Commissioner of Labour Mr. Manoj Priyantha too held the inquiry but did not respond.
- Since there was no cross examination from respondents no re-examination arose.

**B. Mr. Gajaman Hewage Malavige Ananda, Chief Engineer, Technologies, Production and Development stated thus. -**

- He joined as a trainee on 02<sup>nd</sup> May 1968 and after training absorbed to the cadre of Ceylon Transport Board with effect from 02<sup>nd</sup> May, 1972 as a Grade II Technician for Ceylon German Technical Training Institute on 01.08.1974 promoted to II level Student leader, and on 01<sup>st</sup> Nov. 1975 promoted to I class in Grade II as Senior Exhibitor. Thereafter on 28<sup>th</sup> December 1979 selected for Grade VIII A Junior Supervisor and then promoted as Senior Supervisor in staff Rank Grade VIA, with effect from 15<sup>th</sup> March, 1984.
- Ceylon German Technical Training Institute had appointed him as Chief Engineer (Motor Mechanism) Grade III A and on 12<sup>th</sup> September, 2006, assigned further duties and designated New Technologies, Production and Development Chief Engineer.
- He retired on 02<sup>nd</sup> May, 2011 on reaching 60 years and on retirement granted (5) five increments which works out to Rs. 32,090.00 as the final pay.
- He had been placed on the scale of JM 1-1 and seeks placement in HM 1-1 in the scale, effective 01.07.2008.
- Under cross examination he accepts that document marked A 31 has not been issued by any authority.
- Officer of Salaries commission had no idea of the work done at the Ceylon German Technical Training Institute which are purely engineering. As such they are of the opinion that posts such as Human resources Manager, Accountant, Register have been classified under JM 1-1 Also the Salary Commission Officers were briefed on the various functions of the Institute, when all activities concerning Motor Engineering Technology, Administration and Training, and other vital functions were within the ambit of the organization. They requested a comprehensive information submitted, which has not happened so far.
- Work performed by the applicant, he said was far advanced than that position held by Human Resource Manager, Accountant and Register -A real assessment had not been done hitherto.
- Page (158) applicant agrees to submit A 40 the Original, but not submitted
- Applicants documents A 41, not signed-no evidential value.

**C. Mr. Handapangodage Sunil Perera, Ex-Chief Factory Engineer stated that. -**

- He joined the Ceylon German Technical Training Institute as a trainee on 16<sup>th</sup> March 1967 and after training a batch of trainees retained at the institute and others given assignments in various Ceylon Transport Board Depots. And thereafter placed in Grade 8-Foreman, with effect from 05<sup>th</sup> December, 1979 on 1<sup>st</sup> June 1982 promoted to grade 6A-foreman in CTB and in 1987 promoted to grade 5-Engineer and again in 1989 promoted to Grade 4-Trainer Engineer in 1993 promoted to grade 3B-Senior Technical Officer and in 2000 promoted to the rank Chief Factory Engineer-Grade 3A
- In 2002 promoted to Grade 2 as Chief Factory Engineer per letter dated 31.01.2002, backdated to 01.08.2001.
- To fill the vacancy existed for Deputy Director/Deputy Principal post applicants were called from those with Motor Mechanism Technology, for which he as well as Mr. Ananda, one of the Applicants, applied as both were qualified, but strangely any one of the two were not selected.
- On reaching 60 years, retired on 22 April 2020, and entitlement of 5 additional increments were granted and the total salary worked out to Rs. 32,000.00.
- Institute management placed him as well as Mr. Ananda in category MM 1-1 salary scale and with restructuring and absorption, Deputy Chief Engineer's salary works out to Rs. 28,370.00.
- Since Institute did not comply with recommendation of the Human Rights Commission as well as Ministry, they complained to Department of Labour for relief.
- Relief they sought from Department of Labour was to place them in the category of HM 1-1 and pay arrears of salary and gratuity and Labour Department requested management to consider the request favourably.
- In 2006 they were placed in MA 5-2 scale and all persons in MA 5-2 were brought within HM 1-1
- Witness cited several instances where persons categorized in JM 1-1 had been absorbed in HM 1-1.
- Documents A 41, respondents marked as R I in cross Examination, which state that, in Para 4. Human Rights Commission Instructs Management of the Institute, to place him and other persons in Grade HM 1-1
- For the two years past, he had not submit an appeal to the Dept. of Management Services, as the directive speaks of stopping assigning AD-hoc changes.
- While giving evidence, Human Rights Commission had observed that Senior Managers had not apprised the Salaries and Cadre Department properly. Although Human Rights Commission report came out in 2012, until 2018 nothing had happened. Thereafter based on their appeal, the Secretary to the Ministry recommended that they be placed in HM 1-1. which shall be personal to them. A copy of recommendation they had received.
- Under re-examination, it came to light several juniors have been given HM 1-1. They are M. D. S. B. Karunarathe, S. G. K. Amerasinghe and Borella Principal S. D. Dabare.

**5. Evidence by Respondents.****A . Ms. H. D. C. Damayanthi Assistant Manager (Administration and Human Resources) stated that.**

- She joined Ceylon Transport Board as a Clerk on 01.11.1985 and now works as the Assistant Manager (Administration and Human Resources) at Ceylon German Technical Training Institute. She passed the Diploma in human Resources Management conducted by the National Institute of Business Management and followed several courses in salary administration.
- In terms of the Department of Management Services circular No. 30, salary adjustments were made in respect of all employees in the organization.
- In relation to Senior Management positions Manager (Administration and Human Resources), Registrar and Accountant have been included. Also there are certain categories of employees who held positions prior to restructuring whose emoluments adjusted under the new formula, disregarding the stipulated qualifications.

- In view of the complains and allegations from Trade Unions several discussions were held apart from consultation with concerned authorities, implementation was delayed. By then the applicant in this litigation had retired.
- When questioned as to how the former Principal was placed, witness said that on a directive from Department of Management Services, he was placed on HM 2-1 scale.
- According to the Dept. of Management Services, under Senior Management, category, 6 posts have been placed under HM 2-1 for Deputy Director/Deputy Principal, HM 1-1 six position of which Chief, Engineer, Services and Maintenance and not Chief Engineer, Production, Maintenance and Technological Innovations.
- Management on many occasions have written to National Wages and Cadre Commission, as well as to Dept. of Management Services to rectify this anomaly, since without approval from Dept. of Management Services, no change could be made.
- However after several requests Dept. of Management Services instructed to place the Chief Engineer in MM 1-1.
- Under cross examination, she accepts that all 3 applicants were in Grade 3A of Ceylon German Technical Training Institute salary scheme, applicable to very Senior officials. They held positions next to the Principal.
- These 3 were brought within scale MA 5-2 based on the presentation by the Institute Management.
- Witness was silent on certain specific question, But said that she no Idea in making submissions on this matter at that time, to make a presentation to the Dept. of Management Services.
- Dept. of Management Service had taken decision on basis presentation of facts, In reality, proper analysis of duties and functions have not been placed before the authorities.
- Dept. of Management Services had instructed that terms stipulates in the Establishment code to be followed, in conversions.
- With addition of function to the Chief Engineer, Dept. of Management Services had excluded from coverage.
- The restructuring was formulated after a series of consultations with the stake holders.
- Management of the Institute had after two years of the introductions of the Dept. of Management Services circular, changed the title of the Senior Managers thus they were conveniently excluded from placing them in the higher salary scale denying them the legitimate right.
- Mr. Ananda, one of the applications deny being present at salary discussions (R 17), where his signature is forged to prove he was present. Also Mr. Gamini Manchanayake Principal and Mr. Santha Karunaratne, Deputy Principal name was in the attendance sheet but was not present for preparation of the Scheme of Recruitment and salary scale formulation.

## 6. My Observations and Findings

- Management Circular No. 30, issued by Secretary to Treasury dated 22nd September 2006, state as follows, with regard to restructuring of salaries of employees in statutory bodies.
- 02. "ජාතික වැටුප් හා සේවක සංඛ්‍යා කොමිෂන් සභාව විසින් නිර්දේශිත මෙහි ඇමුණුම් 1 හි දැක්වෙන වැටුප් සංශෝධන ඒ ඒ ආයතන සඳහා අදාළ කර ගන්නා ආකාරය නිශ්චය කරනු ලබන්නේ කළමනාකරණ සේවා දෙපාර්තමේන්තුව සහ ජාතික වැටුප් හා සේවක සංඛ්‍යා කොමිෂන් සභාව, අදාළ ආයතනය සමග පවත්වනු ලබන පූර්ව තක්සේරුවකින් අනතුරුවය....."
- 03. "එබැවින්, අදාළ නිලධාරීන් මෙම සාකච්ඡාව සඳහා පැමිණෙන විට  
තම ආයතනයේ පවත්නා සංවිධාන ව්‍යුහය, සේවක සංඛ්‍යා විස්තර, අදාළ සියළුම බඳවා ගැනීම් හා උසස් කිරීම් පටිපාටි සහ කළමනාකරණ දෙපාර්තමේන්තුව විසින් අවසන් වරට අනුමත කරන ලද වැටුප් පරිමාණයන්ද රැගෙන ආයුතු අතර ඒ සඳහා තීරණ ගැනීමේ බලය ඇති ඉහලම කළමනාකරණ මට්ටම් නිලධාරීන් සහභාගි කරවීමට වග බලා ගත යුතුය. "

Treasury Secretary's directions are quite clear in that, the highest person in authority in the establishment is required to be present with all details concerning the roles and functions of its employees.

- It is not clear who attended the discussion, but whoever it is present position is in a jumble, since accurate situation performed by the staff members have not come into focus thereby serious damage is caused to some.
- Paradoxically, circular no. 30 is in conflict with provisions of the Establishment Code, in that it specifically exclude application of provision to **employees of statutory boards and corporation and institution vested in the government**. This circular expects, Managements to follow Establishment Code in relation to conversions-Definition of "Public Officer" explains.
- There is no University in Sri Lanka, which awards degrees in Automobile Engineering. But the Scheme of recruitment formulated by the Ceylon German Technical Training Institute in 30.11.2012 and 30.07.2014 (R 27 A) required a degree, when there is no University, or a Chief Engineer (Production, Services and maintenance). It is unfair to backdate these requirements to employees who worked in 2006.
- In reality both applicants G. K. M. Ananda and H. Sunil Perera, who held very senior positions, count several years of practical experience.

G. H. M. Ananda, had joined as a trainee on 02.05.1968 and his rise is briefly.

- (a) After training, absorbed to Ceylon Transport Board.
  - (b) On 02.05.1972-Gr. II Technician at Ceylon German Technical Training Institute.
  - (c) On 01.08.1974 promoted to II Level student leader.
  - (d) On 01.11.1975 promoted to I Class in Grade II as Senior Exhibiter.
  - (e) On 28.12.1979 selected for Grade VIII as Junior Supervisor.
  - (f) On 15.03.1984 promoted to Senior Supervisor, Grade VI A.
  - (g) On 12.09.2006 appointed as Chief Engineer (Motor mechanism) Grade III A.
  - (h) Assigned further duties, as New technologies, Production and Development Chief Engineer.
- H Sunil Perera had joined Ceylon German Technical Training Institute as a trainee with effect from 16.03.1967, and after training he had been retained.
    - (a) On 05.12.1979 he was placed in Grade VIII as a foreman.
    - (b) On 01.06.1982 promoted to Grade VI foreman.
    - (c) In 1987 promoted to Grade V Engineer.
    - (d) In 1980 promoted to Grade IV Trainer Engineer.
    - (e) In 1993 promoted to Grade III B Senior Technical Officer.
    - (f) In 2000 promoted to Grade III A Chief Factory Engineer.
  - Both applicants had been from lowest strata and risen to most Senior positions in the organization. Although Ceylon German Technical Training Institute is not registered as a University, the ground training as well as theoretical training imparted to the students, surpass that's given in a University, If it was recognized as a University, these two would have been Senior Professors in Automobile Engineering.

- The Institute called applications to fill in the Post of Deputy Director/Deputy Principal. Both were qualified, so they applied but were not selected. As far as the interview is concerned, Management had not formulated a marking criteria-Page 527 in file.
- In order to evaluate the work performed, management should have obtained from each and every executive, a detailed account of the duties and management had failed to do so. In the process severe damage had happened to these two Senior Officers.-Page 416
- The respondents witness Ms. Damayanthi Asst. Manager Administration & Human Resources, failed in answering several vital questions put to her-pages 407, 408, 410, 411, 412, 413, 415, 428. Management should have taken more serious initiative in resolving these matters.
- Management cautiously avoided sending a suitable person of responsibility to give evidence, specially it involved more of technological assessments. Either the Principal or a competent person in the organization would have been ideal, since it is observed that denying placement in HM-1-1 in the scale was a serious unfair labour practice.
- Mrs. D. M. P. D. Perera's claims have been already accepted by the management of the Institute. Also K. D. L. Somadasa failed to give evidence and no expects no decision from arbitrator.

## 7. Award

I have examined the evidence, both oral and documents compare hensively and is of the view that 3 applicants, Mrs. D. M. P. B. Perera, Mr. G. H. M. Ananda and Mr. H. Sunil Perera be placed in HM-1-1 salary scale, with effect from the operative date up to date of retirement. Arreas of salary, computed and deposited with the Asst. Commissioner of labour (Colombo South) Labour Secretariat, Narahenpita, Colombo 05, within 45 days, once the award is published in the *Government Gazette*.

In relation to Gratuity, Employees Provided Fund and Employees Trust Fund, action to be pursued by the Commissioner General of Labour, dependent upon the salary placement and payment of arreas.

This is just and a fair award.

P. NAVARATNE,  
Arbitrator.

18th February 2021.

04-93