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The Gazette of the Democratic Socialist Republic of Sri Lanka

EXTRAORDINARY

අංක 2294/46 - 2022 අගෝස්තු මස 25 වැනි බ්‍රහස්පතින්දා - 2022.08.25
No. 2294/46 - THURSDAY, AUGUST 25, 2022

(Published by Authority)

PART I : SECTION (I) — GENERAL

Government Notifications

My No. : IR/COM/02/2018/152.

THE INDUSTRIAL DISPUTES ACT CHAPTER 131

THE award dated 11.07.2022 transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between 1. Mr. M. A. Saman Wenura Nishantha, No. 409/ 8A, Kottunna Road, Janamahima Place, Biyagama 2. Mr. P. P. D. N. Karunarathna, No. 458/1-C, Mankada Road, Lower Biyanwila, Kadawatha of the one part and Ceylon Petroleum Storage Terminals Limited, Nimawa, Kolonnawa of the other part was referred for settlement through arbitration by order dated 24.07.2019 made under Section 4(1) of the Industrial Dispute Act, Chapter 131 (as amended) and published in *Gazette Extraordinary* No. 2135/16 dated 05.08.2019 of the Democratic Socialist Republic of Sri Lanka, 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,
09th of August, 2022.



In the Matter of Industrial Dispute

Between

01. Mr. M. A. Saman Wenura Nishantha,
No. 409/8 A, Kottunna Road,
Janamahima Place,
Biyagama.

02. Mr. P. P. D. N. Karunarathna,
No. 458/1, C, Mankada Road,
Lower Biyanwila,
Kadawatha.

of the one Part

and

Case No. A/ 77/2019
IR/COM/02/2018/152.

Ceylon Petroleum Storage Terminals Limited,
Nimawa,
Kolonnawa.

of the other Part

Award

1. The Honourable Minister of Labour and Trade Union relations 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 24th July, 2019 and referred the dispute between the aforesaid parties to me for settlement by arbitration.
2. The matter in dispute between aforesaid parties is,

"Whether Mr. M. A. Saman Wenura Nishantha and Mr. P. P. D. N. Karunarathna working at the Ceylon Petroleum Storage Terminals Limited have been caused injustice by the adaptation of a new marking scheme at the interview held for internal promotions to grade A-7, 2017 and if so, to what relief they are entitled."
3. On behalf of the applicant, Mr. Gratien Silva, Representative appeared, while Mrs. Sujeewa Kumari, Attorney-at-law, appeared in respect of the respondent organization. Applicant, Nalinda Karunarathne, Clerk Gr. B1, Evidence is recorded at pages 37 to 93, evidence tendered by the other applicant, M. A. Saman Wenura Nishantha, Foreman (Transport) GR.B1, is recorded at pages 94 to 129. Marked documents of applicants, appear with their written submission - vide A 1 to A 13 and A(s)1 to A(s).9

On behalf of the respondent organization, Mrs. Srimal Pathberiya, Deputy Human Resource Manager, tendered evidence which are recorded at pages 130 to 194 (In respect of Karunarathne), and pages 195 to 234 (In respect of Venura Nishantha) and continued at pages 247 to 253. Evidence tendered by Ms. Samantha Nadeesha Gamage, Manager (Establishment) is recorded at pages 242 to 246. Respondents marked documents Nos. R1 to R23.
4. Findings and observations are as follows -

A. Ceylon Petroleum Storage Terminals Ltd. (CPSTL) is a statutory entity, Management circulated a memo internally, signed by Manager (Human Resources) inviting applications from among staff members, in order to select suitable persons to fill in two positions, namely -

- (a) Post of Distribution Executive (Fleet Operations) and
- (b) Post of Distribution Executive (Invoice Office), both in Grade A=7.

The memo dated 13th March, 2017, while the closing date for receipt of applications fixed for 26th March, 2017. (Pgs. 281 to 284).

Accordingly 30 persons applied and 25 persons were called for interview. For both posts 17 applied. Interviews were fixed to be held on 14th and 15th June, 2017. A duly appointed panel of interviewers, consisted Senior Management Personnel. They were -

1. Mr. Sanjeewa Wijeratne - Managing Director
2. Mr. A. R. S. Athukorale - Director (Planning)
3. Mr. P. D. P. Dharmawansa - Deputy General Manager (HR and Admin)
4. Mr. A. Martin - Deputy General Manager (Operations)
5. Mr. M. A. M. Niyas - Terminal Manager
6. Mr. L. M. T. W. A. Bandara - Distribution Manager

The interview panel had to follow the marking scheme meant for internal promotions (pg.278), which explains in detail the allocation of marks

		C	B	A
Item 01	Basic Edu. Qualifications	25	30	35
Item 02	Annual Appraisal	15	15	15
Item 03	Seniority	20	20	20
Item 04	Curricular Activities & Extra Qualifications	20	15	10
Item 05	Interview	20	20	20
		100	100	100

B. On 14th June, 2017, 17 applicants who tendered for both positions had been interviewed, and marks allotted for both positions at the same time. Others were interviewed on the following day. On completion of the interview, the interview panelists released the results. The following who secured highest marks were selected. They were -

- (a) Mr. H. M. R. B. Wijekoon - as Distribution Executive (Invoice Office)
- (b) Mr. G. M. N. A. Mudunkothge - as Distribution Executive (Fleet Operations)

C. After the release of interview results, two applicants, M. A. Saman Venura Nishantha and P. P. D. N. Karunaratne, alleged that interview panelists, misdirected themselves, thereby caused injustice to them in relation specifically on the following matters -

- Non recognition of seniority
- Manipulation of interview marks.
- Adaptation of a new marking scheme.
- Non acceptance of certificates of competency.

(a) Non recognition of seniority

Following 8 applicants had the highest marks, for seniority, and in accordance with the EPF registration numbers, seniority is as follows -

EPF No. 10210 - A. Abdul Majeed
EPF No. 11320 - S. A. Fernando
EPF No. 11389 - (Mrs.) P. Hewage
EPF No. 11548 - P. P. D. N. Karunaratne
EPF No. 11891 - M. A. S. Nishantha
EPF No. 12155 - (Mrs.) T. G. C. Swarnamali
EPF No. 12386 - W. A. N. Wanniarachchi
EPF No. 13678 - K. A. S. Piyasena

For executive positions of responsibility and authority mere were seniority alone would not be sufficient. It is justified in choosing a more efficient for promotion overlooking mere seniority and promotion is strictly a matter of internal management.

(b) Manipulation of Interview marks.

Applicants, P. P. D. N. Karunaratne grievance is that, he faced only one interview, but had different marks for the two posts. If it was the one and the same interview, there cannot be any variation, since for one he scored 12 and for the other 10.

In respect of most applicants in respect of the two posts, variations existed as such No body has been discriminated and the allegation is baseless.

	Fleet Op.	Invoice Off
A. Abdul Majeed	06	08
M. P. Chandana	08	10
C. S. Hewagampola	10	13
H. M. D. Hindagoda	11	12
P. P. D. N. Karunaratne	10	12
K. M. R. Kodithuwakku	12	11
W. S. P. de Mel	11	12
G. M. N. A. Mudunkothge	15	13
(Mrs.) A. K. R. Priyadarshani	12	13
S. M. Rafaideen	12	13
Y. V. T. Silva	06	07
W. M. R. B. Wijekoon	12	15

(c) Adaptation of new marking scheme,

All enterprises aim at improving efficiency and increased productivity. Therefore various steps and measures are taken towards that end. Maintenance of discipline and administration is the prerogative of the management. Once a scheme is designed and implemented management is required to adopt it faithfully and there shall not be any discrimination.

92% accepted the new marking scheme

i.e. $\frac{100 \times 23}{25} - 92\%$

(d) Non acceptance of Certificates of Competency.

An ideal certificate should contain -

- (a) Name and address of the issuing Authority;
- (b) Name and designation of the person authorized to sign;
- (c) Purpose or the event with dates.
- (d) Name of recipient; and
- (e) Certificate number

Those ingredients are required for the purpose of verification. Forged certificates are referred back to verify it's genuineness. Most institutes have no "legal personality", such as Sports Clubs, Literary Associations, Welfare Associations etc. But maintain good name with proper accounts and lists of membership. However, clubs with a legal personality, where perpetual succession exists have recognition. Absence of said vital information means, there is no evidential value.

5. Award

I have examined the matter in dispute comprehensively and am satisfied that the respondents have not violated or discriminated the applicants in any form. The new marking system is designed very scientifically, so that the best person with extraordinary talent and shall, succeed, who could keep his head and shoulders above the rest. The applicants are not entitle to any relief.

This is just and a fair award.

P. NAVARATNE,
Arbitrator.

11th of July, 2022.

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