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The Gazette of the Democratic Socialist Republic of Sri Lanka

EXTRAORDINARY

අංක 1644/31 - 2010 මාර්තු 12 වැනි සිකුරාදා - 2010.03.12

No. 1644/31 - FRIDAY, MARCH 12, 2010

(Published by Authority)

PART I : SECTION (I) — GENERAL

Government Notifications

My No. : T7/47/2001.

In the Matter of an Industrial Dispute Between :

THE INDUSTRIAL DISPUTES ACT, CHAPTER 131

THE Award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between The Ceylon Mercantile, Industrial and General Workers Union (CMU), No. 03, 22nd Lane, Colombo 03 of the one part and Trans Ware Logistics (Pvt) Ltd., No. 150, 150/1, Pamunugama Road, Tudella, Ja-Ela of the other part was referred by Order dated 03.07.2002 under Section 4(1) of the Industrial Disputes Act, Chapter 131, (as amended) and published in the Gazette of Democratic Socialist Republic of Sri Lanka Extraordinary No. 1244/3 dated 09.07.2002 for settlement by Arbitration is hereby published in terms of Section 18(1) of the said Act.

The Ceylon Mercantile, Industrial and
General Workers Union (CMU),
No. 03, 22nd Lane,
Colombo 03

Case No:
2926

Applicant

and

Trans Ware Logistics (Pvt) Ltd.,
No. 150, 150/1, Pamunugama Road,
Tudella,
Ja-Ela

Respondent.

W. J. L. U. WIJAYAWEERA,
Commissioner General
of Labour.

THE AWARD

Hon. Mahinda Samarasinghe, 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 Enactment of Ceylon (1956 Revised Edition) as amended by Act, Nos. 14 of 1957, 4 of 1962 and 39 of 1968, (read with

Department of Labour,
Labour Secretariat,
Colombo 05,

Industrial Disputes (Special Provisions) Act, No. 37 of 1968, has appointed me to be the Arbitrator by his order dated 03.07.2002 and referred the aforesaid dispute to me for settlement by Arbitration.

The matter in dispute between the aforesaid parties are :-

(1) Whether the termination of the service of the thirteen (13) employees who were in the service of Trans Ware Logistics (Pvt) Ltd. and whose names are referred to in the attached schedule with effect from the dates stated against each name by the said company is justified and if not to what relief each of them is entitled.

(2) Whether the suspension of the services of Mr. M. D. N. D. Deshapriya with effect from 24.12.2001 by Trans Ware Logistics (Pvt.) Ltd, is justified and if not, to what relief he is entitled.

These two issues appear in the Reference dated 31.05.2002.

At the inquiry which commenced on 28th November, 2002 Mr. E. V. N. Cabraal appeared for the applicant Union and Dhananjaya Jayakody Attorney-at-Law of the Employers' Federation appeared for the Respondent Company.

The first issue deals with 7 workers (1) K. P. G. Perera (2) R. Sarath Jayasiri (3) Y. A. D. Stanly (4) U. D. S. Ranasinghe, (5) S. A. Nimal Kitsiri, (6) W. A. Kumarasinghe and (7) R. D. Joseph Raja who services have been terminated on 02.08.2001 for misconduct on account of insubordination.

The workers R. A. Ranasinghe, U. S. Dissanayake, M.M.C. Amarasuriya and P. P. Jayantha whose names appear under Nos. 08-11 were charged for misconduct for sleeping whilst on duty and their services were terminated on 08.10.2001. The services of the 12th worker in the schedule I. S. Y. Chandrasiri were suspended on 24.12.2001 and later terminated with effect from 09.09.2001 for unauthorized absence.

The 13th employee L. Rohana Chandrasiri has resigned from service with effect from 25.09.2001. Subsequently his services have been terminated on the findings of inquiry officer appointed by the Respondent Company.

The applicant Union has not led any evidence at the arbitration proceedings in regard this employee L Rohana Chandrasiri. Being guided by the principal *volenti non fit injuria*, I do not make any award in favour of this employee.

Following witnesses who were not eye-witnesses gave evidence for the respondent (TWI).

- (1) Joseph Rex Fernando - Human Resources, Consultant - TWI
- (2) Chaminda Kumara Dissanayake - Human Resources and Transport Manager.
- (3) Asanka Sanjewa - Leave Clerk
- (4) F. N. de Silva - Domestic Inquiry Officer, a retired Labour Tribunal President.

Documents R1 to R74 were marked at the inquiry, but documents R10 to R14 and R41 and R48 were not produced.

The case of 1—7 workers in the schedule.

The charges leveled against the employees whose names appear under Nos. 1 to 7 in the schedule relate to incidents of in subordination as stated in the show cause letters and or charge sheets,

Eg. The show cause letter R41 issued on K. P. G. Perera charge No. 01 reads as follows :-

“Failure to perform your legitimate duties as required by paragraphs as 5:3 and 5:4 (c) of your letter of appointment dated 8th April, 1996.

Charge 02 states that around 10 a.m. on 18th July, 2001 in a defiant insubordinate manner refused to carry out the

“instructions in respect of the performance of duties that were given to you by Nalaka Aluthgamage and further explained by Mr. Rodney de Silva - Maintenance Engineer thus disrupting the work in the Traffic and Shipping Department.”

In the charge sheet and or show cause letters issued on R. Sarath Jayasiri (R 42) Y. A. D. Stanly (R 43/1) U. D. S. Ranasinghe (R 44/c) Nimal Kitsiri (R 45) W. A. Kumarasinghe (R 46) and R. A. D. Joseph Raja the two charges are similar save the dates of offence.

The eye witnesses Nalaka Aluthgamage and the Maintenance Engineer Rodney de Silva who were directly involved or witnessed the incidents have not given evidence in the Arbitration proceedings.

The learned counsel for the Respondent in his exhaustive written submission dated 22.01.2009 has accepted this position as the two witnesses referred to above have now left the company. This point is in favour of the some employees.

In the arbitration proceedings Mr. Joseph Rex Fernando Consultant Human Resources in this evidence explained that

containers are transported by heavy vehicles moved by prime movers with large trailer on which one can mount the container. The workers 1 to 7 are expected to transport loaded containers from Ja Ela to Port and back.

Mr. Chaminda Kumara Dissanayake giving evidence for the Respondent marked documents in regard to the workers 01 - 07 in the schedule. The charges leveled against the workers referred to above were their failure to perform legitimate duties in a defiant and insubordinate manner to carry out the instructions in respect of performance of their duties that were given to them by Mr. Nalaka Aluthgamage and Mr. Rodney de Silva. In any case as stated by the learned counsel for the Respondent the evidence of Messrs Nalaka Aluthgamage and Rodney de Silva fall under the category of secondary evidence as they did not give evidence in the arbitration proceedings.

The evidence of K. P. G. Perera whose name appears at No. 1 in the schedule was led by the applicant union on behalf of the 7 workers in the 1st category of employees.

K. P. G. Perera (at page 3) on 20.06.2007 states as follows :-

“කන්ටේනර් 10 කට රු. 350.00 ක දීමනාවක් ලැබුණා. ඒ සෑම ප්‍රිස් එකකටම රු. 40.00 බැගින් ගෙව්වා. ප්‍රයිම් මුවර් රියදුරන් 23 ක් සිටියා. ඊට සමානව සහායකයන් ද සිටියා. . . .

අපි ඉරිදා වැඩ කලාම අමතරව නිවාඩුවක් දුන්නා. ඒ නිවාඩුව කම්පැනිය නතර කර දැමුවා. පැය 24 ක් වැඩ කලාම ඉරිදා දිනයක් වැඩ කලොත් ඒ වැඩ කළ සේවකයාට හිලව් නිවාඩුවක් දුන්නා. එය පසුව දෙන්නේ නැතිව අත්හැරියා

ඊට පසු අපි ඉරිදා වැඩ කිරීම නතර කළා. සියළු දෙනාම සමිතියේ අනු දැනුම ඇතිව සමිතියට ලිඛිතව දැනුම් දී එය නැවැත්වුවා. ඊට පසු අපට වැඩ නොදී අපව සේවක විවේකාගාරයේ තැබුවා. . . .

අප වෙනුවට ෆ්ලෝ කෙයා ක්ලිනික් සර්විස් (ප්‍රයිවට්) ලිමිටඩ් ආයතනයේ සේවකයින් ගෙන්වා ගත්තා.

ෆ්ලෝ කෙයා ක්ලිනික් සර්විස් (ප්‍රයිවට්) ලිමිටඩ් (Floor Care Cleaning Service (Pvt) Ltd.,) ආයතනයේ සේවකයින් ඇවිත් ආයතනයේ වාහන එළෙච්වා.”

According to K. P. G. Perera on or about 17.07.2001 the drivers were summoned to the office by an announcement over the loudspeaker. Mr. Nalaka the supervisor asked the workers to work on the washing bay, the place where the containers are cleaned. K. P. G. Perera further added :

“නාලක මහතා ඇහුවේ වොමින් බේ එකේ වැඩ කරන්න බැරි ද කියා මම කිව්වා බැහැ කියන්නේ නැහැ. ඇයි අපට සාමාන්‍ය වැඩ නොදෙන්නේ කියා. මේ වැඩ අපට පුළුවන්. අපි ඉන්නේ කොම්පැනියට වැඩ කරන්න තමයි කියා කිව්වා. (2007.06.20 දින පරීක්ෂණ සටහන් 7 වෙනි පිටුව)”

“රොඩ්නි මහතාට මම කිව්වා අපට මේ වැඩ කරන්න පුළුවන් ඇයි අපට ප්‍රයිම් මුවර් වැඩ නොදෙන්නේ කියා. එවිට ඒ මහතා කිව්වා මෙය මැනේජ්මන්ට් එකේ තීරණයක්, ඒ ගැන මට කිසිදෙයක් කියන්න බැහැ කියලා. (2007.07.20 දින පරීක්ෂණ සටහන් 8 වෙනි පිටුව).”

Under cross examination by the learned counsel for the Respondent he has stated that he is giving evidence for 1 to 7 workers including himself.

It is clear from the evidence of the workman that all the 7 workers were eagerly expecting their normal assignment as prime mover drivers to perform their duties.

The Respondent has cunningly confined these workers to their rest room, having refused lieu leave for working on Sundays.

With the intention of getting rid of these workers, cleaning of the containers had been entrusted to the floor care cleaning company. There is no evidence to show that these workers refused to take the containers to the washing bay for cleaning. The retention or confirming of these employees on a pre-prepared plan seems to be to get rid of them.

This witness (at page 10 of the proceedings) on 23.07.2007 under cross examination by the counsel for the Respondent in a sad mood stated :

“ යම් උගුලක අපිව පැටලෙව්වා” After the workers were confined to their rest room, the company was busy preparing show cause letters to get rid of them.

In the light of the evidence led before me I am of the view that the termination of the services of 1 -7 employees as shown in the schedule in UNJUSTIFIED. Since the Transport Department of the Respondent Company is now defunct, re-employment of these employees is not possible.

Taking into consideration the above facts, and the last drawn salaries of the employees and the number of years of their services I order the awarding of compensation to 7 employees as stated below :-

- (1) Mr. K. P. G. Perera
Last drawn monthly Salary Rs. 5,625
No. of years of service — 5 1/2
Amount of compensation — Rs. 92,812
- (2) Mr. R. Sarath Jayasiri
Last drawn monthly Salary Rs. 5,575
No. of years of service — 6
Amount of compensation — Rs. 100,300
- (3) Mr. Y. A. D. Stanley
Last drawn monthly Salary Rs. 5,625
No. of years of service — 5 1/2
Amount of compensation — Rs. 92,812
- (4) Mr. U. D. S. Ranasinghe
Last drawn monthly Salary Rs. 4,515
No. of years of service — 5 1/2
Amount of compensation — Rs. 74,500
- (5) Mr. S. A. Nimal Kithsiri
Last drawn monthly Salary Rs. 5,100.00
No. of years of service — 3
Amount of compensation — Rs. 46,000
- (6) W. A. Kumarasinghe
Last drawn monthly Salary Rs. 5,625
No. of years of service — 6
Amount of compensation — Rs. 101,250
- (7) Mr. R. D. Joseph Raju
Last drawn monthly Salary Rs. 5,625
No. of years of service — 5
Amount of compensation — Rs. 84,400

The case of workers 08 - 11 in the schedule

There are four employees in this category -

- (8) R. R. A. Ranasinghe - Driver
- (9) M. M. C. Amarasuriya - Driver
- (10) P. P. Jayasena - Driver

The four workers were dismissed on 8th October, 2001 for sleeping whilst on duty.

R. R. A. Ranasinghe was served with a charge sheet R27 for sleeping between 2.20 and 2.30 a.m. on 4th May, 2001 inside the vehicle No. 47-8908. The “detection” had been made by Susantha Jayasinghe Senior Executive and Mr. Eshan Wanigasekara, Trainee Wharf Clerk, but these two officers have not give evidence in the arbitration proceedings.

U. S. Dissanayake was charged by charge sheet No. R 28 for sleeping inside vehicle No. 47-8912 between 2.20 a.m. and 2.30 a.m. on 4th May, 2001.

According to the charge sheet No. R 29 served on M.M.C. Amarasuriya driver, he was found sleeping between 3.30 a.m. and 4.30 a.m. on 4th May, 2001.

According to the charge sheet R 30 served on the employee No. 11 P.P. Jayasena on 4th May, 2001 he was found sleeping between 2.30 a.m. and 3.30 a.m. by Messrs Susantha Jayasinghe and Eshan Wanigasekera. According to the charge sheet the total amount of time spent by the 4 employees who lost their jobs for sleeping is 140 minutes. The four employees lost their livelihood for sleeping 140 minute in the early hours of the day. There is no evidence to show that this alleged action of the four employees caused any damage or loss to the Respondent.

It is not clear how they detected this “misconduct”. The two witnesses who made the detection have not given evidence at the arbitration inquiry. However it is unfortunate in a country like Sri Lanka where there is a developed system of labour laws for two (2) employees to lose their livelihood for sleeping 10 minute and two other employees for allegedly sleeping for 1 hour in the early hours of the day in question.

Domestic Inquiry against 1 -7 employees and 8-11 employees had been held by Mr. F. N. De Siva, a retired Labour Tribunal President.

The Domestic inquiry against 8 to 11 employees for the misconduct of sleeping was held on 3 days. The workers were not represented by their Trade Union or any other person. The report of the inquiry officer was produced marked R39.

The second paragraph of R 39 states as follows :-

“The 4 accused have taken up the position that they were on duty that day from morning and they were carrying on their duties without a break and they were not sleeping and they had no time to sleep.”

It appears to be a one sided inquiry. The workers had no say but the inquiry officer had his way and there was no justice and fair play.

There was no evidence before me as arbitrator that the four employees were sleeping. they were on duty inside their vehicle expecting a call for an assignment. There was no evidence that they were asked to undertake a trip or given an assignments. Out of the four employees, Ranasinghe and

Dissanayake are alleged to have been caught sleeping from 2.20 to 2.30 a matter of 10 minutes. The other two are alleged to have slept for one hour. It is unfortunate and unreasonable to terminate their service for sleeping for few minutes. In any case there was no direct evidence before me that these four employees slept at all.

Taking everything into consideration I hold the view that they should not have been given the Supreme punishment. Taking into consideration the last salary drawn by them and the number of years of service to the Respondent Company I have decided to award compensation at the rate of three months salary for each year or service calculated as stated below :-

- (08) Mr. R. A. A. Ranasinghe - Driver
Period of service — 5 1/2 years
Last drawn monthly Salary Rs. 5,100
Amount of compensation — Rs. 84,150
- (09) Mr. U. S. Dissanayake - Driver
Period of service — 3 years
Last drawn monthly Salary Rs. 5,625
Amount of compensation — Rs. 50,600
- (10) Mr. M. M. C. Amarasuriya - Driver
Period of service — 5 years
Last drawn monthly Salary Rs. 5,625
Amount of compensation — Rs. 84,500
- (08) Mr. P. P. Jayasena - Driver
Period of service — 5 years
Last drawn monthly Salary Rs. 5,625
Amount of compensation — Rs. 84,500

I consider this award just and equitable.

The Case of M. D. N. D. Deshapirya - Driver Assistant

The second part of the reference refers to the suspension of this workman, the driver's assistant of the vehicle No. 47 - 8908, with effect from 24.12.2001, the documents R. 67 to R. 72 were marked by the Respondent through the evidence of Chaminda Kumara Dissanayake who was the Manager (Human Resources) of the Company. According to R. 67 the employee had been suspended with immediate for misconduct and inability to perform duties entrusted to him.

According to the evidence this workman he was detailed by the management to proceed I.M. Apparals in the vehicle at 11.30 a.m. and it was observed by this employee that a tyre of the trailer No. 67-1646 needed repairs.

The employee had gone for lunch at about 12.02. leaving the vehicle in the Transport Division. He seems to have returned after lunch at about 12.30 to find that the vehicle was not there. Therefore his services were suspended by R72 and an inquiry was held by Mr. F. N. de Silva retired I.T. President.

The Respondent marked as R73 the original of the letter of appointment issued to the employee and clause 4:2 of that letter as R73 (a) reads as follows :-

“4:2 In case of misconduct you will be suspended without pay and no notice or payment in lieu will be made by the company in the event of your dismissal for such misconduct”

After the disciplinary inquiry by Mr. F. N. de Silva retired I.T. President his service were terminated. The report for the formal disciplinary inquiry is filed of record marked R71.

This witness was giving evidence at the formal disciplinary inquiry held by Mr. F. N. de Silva, Applicant's representative showing R70 he inquired whether pages 1, 2 and 3 of the inquiry proceedings were signed by him. He flatly denied that his signature appears in the proceedings referred to above. From his behaviour I understood that either he was confused or wanted to show the arbitrator that he is under mental distress. I therefore adjourned the inquiry for 24.11.2008. ?

When this employee resumed his evidence in chief on 24.11.2008 he admitted that he signed the inquiry proceedings R70 on page 1 on 24.11.2008. :

“ප්‍ර : පසුගිය දින අවසාන ප්‍රශ්නය වශයෙන් ඇසුවේ ආර් 70 ලේඛනය ඔබ අත්සන් කර තිබෙනවාද කියා නේ ද ?

උ : (ආර් 70 ලේඛනය සාක්ෂිකරුට පෙන්වයි).

ප්‍ර : ආර් 70 ලේඛනය තමා අත්සන් කර තිබෙනවා ද ?

උ : ඔව් .”

Evidence of this nature harms the credibility of the witness as a whole. I therefore refuse the evidence of the employee. I make no award in favour of M. D. N. D. Deshapirya.

The case or worker No. 12 in the Schedule L. S. Y. Chadrasiri.

The case of this employee is dealt with separately from the others Mr. Rex Fernando has spent a considerable time in

giving evidence and producing all documents relevant to this case. The employees were entitled to 14 days annual leave and 7 days casual. The workman also accepted this position that leave should be applied according to a certain procedure adopted by the Company. Asanka Sanjeewa, the officer in charge of leave in the department stated that no pay leave is ordered when an employee has exhausted his quota of leave and when an employee absented without authority, unauthorized absence tend to descript proper operation of the business.

Mr. Rex Fernando in giving evidence about I. S. Y. Chandrasiri states "He was a habitual absentee and repeated letters of warnings and cautions issued by my predecessor and I had the occasion also to counsel his unauthorized absence (Vide page 19 in the proceedings of 06.10.2004)"

Warning letters R15 (for 1997) R16 (for 1998) R17 (for 1999) R 19 (for 2000) had no effect on this employee.

The employee while giving evidence on his behalf has produced A3, A4, A5, A6 and A7 medical certificates with

regard to the fracture of his hand due to the accident caused to him on 01.05.2001. But I am not satisfied with regard to the manner in which this employee had obtained prior to the accident in May 2001 as well.

Consideration the totality of the incidents of leave appropriated by this employee prior to the accident in May 2001 and even after the accident, I am satisfied that he had not reformed himself over the years and no employer could tolerate such a conduct.

It is clear that the Transport Division of T. W. I. is not existing now, and taking everything into consideration. I make no award in favour of I. S. Y. Chandrasiri, the workman No. 12 in the Schedule.

T. Piyasoma,
Arbitrator.

24th of November, 2009.

03-907.

My No. : IR/10/02/2006.

In the Matter of an Industrial Dispute Between :

THE INDUSTRIAL DISPUTES ACT, CHAPTER 131

THE Award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between Mrs. Sita Gunawardane, No. 16, Nalandarama Road, Nugegoda, of the one part and Bank of Ceylon, Head Office, Colombo 01 of the other part was referred by Order dated 26.01.2007 under Section 4(1) of the Industrial Disputes Act, Chapter 131, (as amended) and published in the *Gazette* of Democratic Socialist Republic of Sri Lanka Extraordinary No. 1484/5 dated 13.02.2007 for settlement by Arbitration is hereby published in terms of Section 18(1) of the said Act.

W. J. L. U. WIJAYAWEERA,
Commissioner General
of Labour.

Department of Labour,
Labour Secretariat,
Colombo 05,
26th February, 2010.

Ms. Sita Gunawardena
16, Nalandarama Road,
Nugegoda.

Applicant Party of the First Part.
and
Case No: A 3205
Bank of Ceylon,
Head Office,
Colombo 1

Respondent party of the Second Part.

On this 2nd day of February 2010.

The Honourable Minister of Labour Relations and Foreign Employment 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, 4 of 1962 and 39 of 1968, (read together with Industrial Disputes Special Provisions Act, No. 37 of 1968), has appointed me as the Arbitrator to settle the following dispute by Arbitration.

- (1) Whether the non granting of the promotion to Grade III of Class 2 by the Bank of Ceylon to Ms. Sita Gunawardena who was in the service of the said Bank is justified and if not justified, to what relief she is entitled ; and
- (2) Whether the non granting of service by the Bank of Ceylon to Ms. Sita Gunawardena who was in the service of the said Bank until she reached the age of Fifty eight (58) years is justified, and if not justified, to what relief she is entitled.

THE AWARD

Proceedings.

Proceedings into this arbitration began on 08.06.2007 and was conducted on 23 days ending on 30.09.2009 when the written submissions of the two Parties were tendered.

The Applicant Party of the First Party (hereinafter called and referred to as the Workman) stated that she had joined the Party of the Second Part (hereinafter called and referred to as the Bank) as a junior clerk/Cashier on 03.06.1974 until her forced retirement on 25.01.2006. The workman said that in early 2003 applications were called by the Bank to fill a vacancy in the position of Assistant Manager Grade III Class 2 and said that she had satisfied all the required qualifications for that post but had not been selected.

The workman in her evidence stated that consequent to her not being promoted to Grade III Class 2, the Respondent Bank had called for her explanation in writing alleging that she had failed to hand over originals of certain security document to the Legal Officer belonging to a defaulting customer, Globe Blenders and Bottlers Lanka (Pvt.) Ltd., She stated further that this incident had taken place in June/July 1997 when she was serving in the Recoveries Unit of the Metropolitan Branch of the Respondent Bank.

continuing her evidence in chief she said that after a purported inquiry the Respondent Bank had imposed disciplinary orders, namely to severely reprimand her and not to consider her eligible for promotion for a period of 2 years from 19.08.2003, the date on which the Bank had called for her explanation as aforesaid. The workman also said that she had appealed against this order on two occasions to the Bank but her appeals were not allowed.

The workman also said that she was deprived of any promotions for a period of two years ending in August 2006 which went beyond the period of her optional retirement age

of 58 years and therefore had incurred a substantial financial loss. She therefore sought reasonable compensation taking into account the loss incurred because of the difference in her salary and that of the position of the Assistant Manager, compensation on account of her being denied almost 30 months of salary on the basis she could have earned as an Assistant Manager and for other EPF, ETF, and other benefits including the payment of gratuity and pension she would have been justly entitled to. The workman gave evidence on her own behalf and she was cross examined by the respondent Bank.

According to the evidence of the workman the main contention of the Respondent Bank had been that she had alleged misplaced some vital security documents which were necessary to file action against a defaulting customer of the bank. In cross examination when the workman was shown document R1, R1 (a) and R1(b) she admitted that she had written the endorsement in her hand writing but said that she could not remember as to why she had written that remark. The workman also said that the Bank procedure did not have a system of acknowledgement of correspondence between the staff of the Bank and therefore she had not obtained the signature of the Senior Legal Officer when she handed over the security document to her. However the workman marked as A15 and A16 documents which showed that the workman had followed the “dual control” procedure of the Bank and obtained the Indemnity Bond and other security documents from the security vault.

The Respondent Bank led the evidence of the Senior Legal Officer Ms. Gunasekera who said that the issue that gave rise to the current industrial dispute was whether the workman had misplaced certain documents marked by the Bank as R5 and R7 which were copies of the said documents, Witness Gunasekara pointed out that there were certain inconsistencies in these in these documents and this would not be the case had the originals been given to her. Witness said in evidence that she had asked the Manager Recoveries for the originals of the Overdraft Agreement or the Indemnity and the Guarantee, and when the Manager Recoveries had instructed the Applicant Workman to hand over the documents to the workman, she had told him that the original documents had already been handed over to witness but upon further inquiry the workman was able to produce a copy of the document marked A14 (and marked a R1 by the Bank) which contained the remarks typed as “all documents are originals”. Witness Gunasekera said that this note in her copy with the intention of showing that she had handed over the original documents in question to the witness.

Witness Gunasekera also said that the Bank inquired into the purported loss of these documents and found it was the

fault of the workman. Witness said that this proved by other inquiries held at various level at the Bank. Witness contended that the workman had taken a false position with regard to the lost documents. Witness produced and marked as R23 the Register of Securities Delivered from the Vault in which the signature of the workman appear. Witness Gunasekara said that the security documents taken from the Vault by the workman was never handed over to her and therefore the total responsibility for the loss of the said documents is with the workman.

CONCLUSION

The thrust of the argument of the Respondent Bank is that the certain security documents need for filing action against a defaulting customer, Glove Blenders and Bottlers Lanka Ltd had been misplaced or lost due to the careless handling of these documents by the workman. It has to be pointed out however that the Bank through its main witness Gunasekara failed to prove that the documents were lost and/or misplaced and it was due to the carelessness or negligence of the workman. Also though the witness of the Bank contended that the workman had altered the records, this was also not proved.

Secondly, the purported loss is supposed to have taken place in June/July 1997 but the so called disciplinary inquiry into the purported loss was held in 2001 after a loss of nearly 4 years. This only speaks of some prejudice against the workman which reeks of unfair and unacceptable conduct.

The decision of the Disciplinary Committee is flawed as there was a lapse of several years before investigations were conducted to determine whether there had been an actual loss. The purported inquiry had been held by a so called disciplinary committee which consisted of the high ranking officials of the Bank. In such matter, the Bank should have had an independent inquiry officer to investigate and give them a reasoned out result of the inquiry. Nothing of that nature has happened and the vital rule of law "*audi alteram partem*" has been violated. In the premises, the conclusion of the disciplinary committee cannot be accepted.

Though the Respondent Bank claimed that the remark made in R1(a), "All documents are originals" had been done by the workman to give herself an alibi, the Bank failed to prove its contention by calling in evidence the Chief Manager Recoveries who could have testified on this matter and to other matters initiated by the Chief Recoveries Manager and marked as R1, R2 and R4.

With regard to the workman's claim that she could have worked up to the compulsory age of retirement - 58 years - it

would have been a reasonable expectation at the time she joined the service of the bank.

In the light of the evidence recorded from both the workman and the bank, it appears that there seems to have been a thread of prejudice against the workman and all the actions of the bank appear to point in that direction. For example the lapse of almost 4 years before the matter of the missing documents were discovered and a explanation sought from the workman. Also the holding of the inquiry also took a long time while the workman was suspended from service. This led to the loss of her prospects of promotion though she was qualified for the higher position in the Bank.

AWARD

Taking into consideration the evidence led by the applicant workman and the respondent bank and on a balance probabilities I make the following award to the Applicant workman in the following manner :

1. The non granting of the promotion to Grade III Class 2 is not justified. It was seen in evidence that the workman was eminently qualified for the promotion where even those who had lesser qualifications and experience had been promoted. The workman had been retired on 25.01.2006 while she had 2 years and 3 months to reach the compulsory age of retirement.

2. That the non granting of service to the workman by the respondent bank is unjustified and therefore she is entitled to the said promotion to the position of Assistant Manager in Grade III Class 2. In the premises I award that she be promoted to Grade III Class 2 of the bank's service and be promoted accordingly to the position of Assistant Manager ;

3. That the workman be placed on an appropriate point on the revised salary scale (2006 - 2008) for the period from 1997 to the age of retirement.

Accordingly I direct the payment of arrears of salary for the workman be deposited with the Commissioner of Labour Colombo Central and the granting of the promotion be finalized and awarded within one (01) month of the publication of this Award in the Government Gazette of the Democratic Socialist Republic of Sri Lanka.

Dr. V. Irwin Jayasuriya,
Attorney-at-Law,
Arbitrator.

03-908