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The Gazette of the Democratic Socialist Republic of Sri Lanka

EXTRAORDINARY

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No. 2429/48 – FRIDAY, MARCH 28, 2025

(Published by Authority)

PART I: SECTION (I) – GENERAL

Government Notifications

My No.: IR/COM/03/V/2015/183.

THE INDUSTRIAL DISPUTES ACT - CHAPTER 131

THE award No. A/40/2017 dated 26.02.2025 transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between Mr.I.G.G.Thushara Aberatne, Rambukpitiya, Nawalapitiya of the one part and Sri Lanka Transport Board, No.200, Kirula Road, Colombo 05 of the other part was referred for settlement through arbitration by order dated 09.11.2017 made under section 4(1) of the Industrial Dispute Act, Chapter 131, (as amended) and published in *Gazette* Extraordinary No 2045/6 dated 13.11.2017 of the Democratic Socialist Republic of Sri Lanka, is hereby published in terms of section 18(1) of the said Act

H.K.K.A. JAYASUNDARA,
Commissioner General of Labour.

Department of Labour,
Colombo 05.
19th March, 2025.



ARBITRATION AND INDUSTRIAL COURT BRANCH

Matter of an Industrial Dispute

Ref No.IR/COM/03/V/2015/183
Case No.A/40/2017

Between

Mr.I.G.G.Thushara Aberatne, Rambukpitiya, Nawalapitiya.

Of one part

and

Sri Lanka Transport Board, No.200, Kirula Road, Colombo 5.

Of other Part

The Award

The honourable minister of labour, 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 as arbitrator by his order dated 9.11.2017 and referred the following disputes to me for settlement by arbitration.

The matter in dispute between the aforesaid parties is -

*Whether Mr. I.G.G. Thushara aberatne who worked as the foreman of hatton depot of the sri lanka transport board has been caused injustice by his services being interdicted without pay from 30.05.2013 To 17.03.2014 As per letter no. Sri langama /masaka/vinaya/110/2013(68), his services being suspended for a period of 03 months as per disciplinary order no. Sri langama /masaka/vinaya /111/2014(68-2013) dated 04.03.2014 And charging a sum of Rs. 15,290/= And if so, to what reliefs he is entitled.

Appearance

Mr.H.A.G.Michael

Representative of nidahas pravahana sewaka samithiya appeared for the party of the first part.

Legal officer, Ms.Shanika gallage and state counsel Ms safreen salahudin appeared for the party of the second part.

Both parties have filed the statements under Regulations 21(1) and 21(2) of the industrial disputes regulations of 1958 as amended.

Mr. I.G.G.Thushara Aberatne, Senior Foreman in his evidence stated as follows.,

The Applicant joined the Respondent Board as a Lathe Machine Operator on contract basis. Thereafter he worked as Senior foreman and as a Procurement Officer attached to the Sri Langama Hatton Depot. Further he said he was assigned to purchase spare parts. He has been doing this job for a period of about 8 years.

He further said he was interdicted due to false complaint.(A1). Charge Sheet A 2. He said he rejected all the allegations. (A3)

He further said prior to Charge Sheets being issued there was an inquiry conducted by Delpitiya Provincial Office in which no charge was leveled against the Applicant.

He further said by 2nd inquiry held by Sabaragamuwa Provincial Office charges were framed against him. According to Sri Langama disciplinary rules a disciplinary inquiry has to be concluded within 4 months.

The applicant said his inquiry lasted 9 months.

The Applicant said he rejected the 1st charge.It says on 9.6.2008 the Applicant obtained Rs 25,000/= by IOU from Hatton Depot.

He said he denied taking a such amount.

He said he was given Rs 25,000/= by Depot Manager.

He further said Depot Manager who got the cheque, countersigned and sent it to the bank through a Peon and obtained the cash.

He said he further worked as a procurement officer of the Depot in 2008 in addition to his normal work.

He further said if the value of spare parts are more than Rs. 25,000/ and not available in the Stores Depot Engineer get the approval from provincial Engineer.Depot Manager got the money.but the voucher was in the name of the Applicant.

He further said after getting necessary approval he went to Colombo and purchased the spare parts necessary for two buses.

As a 3rd charge he was alleged that he purchased spare parts for Rs 2140/ and Rs.13150/= respectively by submitting false bills, he disputed that charge.He further said that inquiring officer found him not guilty. He further said incident was supposed to taken place on 9.06.2008 and charges were framed against him after 5 years.He further said that he refused all charges 1 to 7.

Since the Applicant was not satisfied with the Order of the Disciplinary Inquiry he made an Appeal. Since no justice being done the Applicant came to the Industrial Court. With regard to the Charge no.4 the Applicant was acquitted by the inquiring officer. (A 9)

With regard to Charge No.5, The Applicant stated that he has acted correctly by showing spare parts he bought to the Security, to the head of his section and finally handed over to the Stores.

With regard to Charge No. 6 and 7,the Applicant was not found guilty of either taking bribes or any fraudulent act.He was suspended for a period of 3 months.(the said order was removed later by Appeal order marked A10).

During the period of suspension the Applicant's salary was not paid and he was asked to pay Rs. 15,290/ to the Respondent.

In contrast the Party of the Second Part has failed to prove their case.

After taking into totality of evidence, I have come to following conclusion.

a. The Respondent has acted unfairly and maliciously towards the Applicant by suspending his services unfairly.

b. The Respondent has acted maliciously and irresponsible manner by asking the Applicant to pay Rs 15,290/= by way a disciplinary order.

In the circumstances, I wish to quote majority decision of the Supreme Court in State Bank in India vs. Edirisinghe (1991) that the arbitrator has to make an award which is just and equitable, he is not tied down and fettered by the terms of the contract of employment. He can create new rights and introduce new obligations between the parties. The effect of the award is to introduce terms which become implied terms of the contract. It was pointed out that as industrial arbitrator creates a new contract for the future in contrasts to a judge who enforces rights and liabilities arising out an existing contract. An industrial arbitrator settles disputes by dictating new conditions of employment to come into force in the future when he cannot get the parties to agree to them in contrast to a judge who determines the existing right and liabilities of the parties.

In the circumstances taking into consideration the totality of evidence led before me I make award that the party of the First part: Applicant I.G.G.Thushara Abeyratna

be paid a sum of Rupees Two Hundred Fifty Eight Thousand Eight Hundred and Forty Three and cents Seventy Four (Rs 258,843.74) as Compensation (Salary denied to the Applicant:Rs. 243,553.74 + Rs 15,290/ being amount paid by the Applicant to the Respondent) by the Respondent, Sri Lanka Transport Board (party of the Second part).

And the aforesaid money should be deposited by the Party of the Second Part at the office of the Assistant Commissioner of Labour, Colombo East.

I further make order that this award should be implemented within 21 days of the publication in the Government Gazette of the Democratic Socialist Republic of Sri Lanka.

I consider this award is just and equitable.

KAPILA M. SARATHCHANDRA,
Arbitrator.

26th February 2025

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