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EXTRAORDINARY

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PART I : SECTION (I) — GENERAL

Government Notifications

My No. : IR/14/14/2007.

Reference No. IR/14/14/2007

THE INDUSTRIAL DISPUTES ACT (CHAPTER 131)

THE award transmitted to me by the Arbitrator to whom the Industrial Dispute which has risen between Mr. S. M. Wijekoon Banda, No. 216/1, Polgaha Anga, Weligalla/Mr. W. G. Panditharatha, No. 31, Mount Prenian, Murutalawa/Mr. K. G. Piyadasa, No. 10/25, Gala Watta, Dharmapala Mawatha, Kandy, of the one part and Sri Lanka Telecom Limited, Head Office, P. O. Box 503, Colombo 01 of the other part was referred by order dated 08.09.2006 made under Section 4(1) of the Industrial Disputes Act, Chapter 131 (as amended) and published in the Gazette of the Democratic Socialist Republic of Sri Lanka Extraordinary No. 1463/2 dated 18.09.2006 for settlement by Arbitration is hereby published in terms of Section 18(1) of the said Act.

1. Mr. S. M. Wijekoon Banda,
No. 216/1, Polgaha Anga,
Weligalla.
2. Mr. W. G. Panditharathna,
No. 31, Mount Prenian,
Murutalawa,
3. Mr. K. G. Piyadasa,
No. 10/25, Gala Watta,
Dharmapala Mawatha,
Kandy.

.....Applicants

M. D. CHANDANI AMARATHUNGA,
Commissioner of Labour.

Case No. A-3184

Vs.

Department of Labour,
Labour Secretariat,
Colombo 05,
11th June, 2013.

Sri Lanka Telecom Limited,
Head Office, P. O. Box 503,
Colombo 01

.....Respondent

The Award

Minister of Labour Relations and Foreign Employment do 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 Act, Nos. 14 of 1957, 4 of 1962 and 39 of 1968 (read with Industrial Disputes (Special Provisions) Act, No. 37 of 1968) hereby appointed me. As Arbitrator and referred the aforesaid dispute to me for settlement by arbitration.

Statement of matter in dispute

The matter in dispute between the aforesaid parties is

Whether the three (03) employees namely Messers. S. M. Wijekoon Banda, W. G. Panditharatna and K. G. Piyadasa who were dismissed from the service with effect from 29.07.1995 by Sri Lanka Telecom Limited is entitled for the reinstatement in the service and if so entitled, to what relief each of them is granted.

This matter was taken up for inquiry. Both parties were present. Attorney-at-Law Mr. Ranhoty with Representative Mr. Phetiya goda appeared for the applicants. Attorney-at-Law Mr. Vijith Wickramaratna appeared for the respondent.

I have examined the evidence in this case both, oral and documentary, and the written submission of the parties.

The evidence of Applicant Mr. Piyadasa shows that he was appointed as an unskilled Labourer under the Respondent on 9/1/74. He worked a period of 17 years under department of Telecommunications and subsequently he continued in employment under Sri Lanka Telecom Corporation as a Skilled Labourer grade I, He retired from the Department of Telecommunications at the age of 46. There was an incident on 07.04.1994. He was working as Head of Section (Head Bass). The incident related to an underground Cable Drum taken from the Wattagama Stores. D. I. T. should order the issue of the Cable Drum from the stores with the approval of the Engineer. This was not done. The D. I. T. ordered the store keeper to issue the said Cable from the stores. The requisition to be issued, later his evidence is that he was in office. D. I. T. spoke to the store-keeper to issue the Cable to him (Piyadasa). He went to the Wattagama Stores to take the Cable in the evening at about 4.30 p. m. The D. I. T. requested the lorry driver Wijerathna to take the lorry and bring the Cable from Wattagama Stores to Kandy. The cable was not unloaded in Kandy. It remained in the lorry. Applicant stated that he got order from D. I. T. to go in the lorry with two others and bring goods from the Colombo Maradana Stores.

On the next day 08.04.1994, Applicant Piyadasa went in the lorry with the Cable taking with him. Applicant Wijekone Banda and Applicant Panditharathna. The Lorry driver was Wijerathna D. I. T.'s order was to give the Cable Drum to driver Ellepola Applicant stated that the lorry was stopped in front of Sugathadasa Stadium.

The evidence of applicant Piyadasa shows that Ellepola came in a Delica Van and brought a lorry and unloaded the Cable from the Telecom lorry and loaded it into the lorry brought by Driver Ellepola. The lorry with the Cable was taken by Ellepola towards Mattakuliya. Applicant Piyadasa stated that he went in the Telecom lorry to Maradana Stores. Store-Keeper at Maradana inquired about the Cable Drum he (Piyadasa) told the store-keeper that he does not know what happened to the Cable Drum driver Wijerathna gave it to driver Ellepola. Applicant came back to Kandy. He was requested by the D. G. M. in Colombo to give a statement to the police. He gave a statement to the police at about 7 p. m. after that, a case was filed in the Magistrate Court Kandy against five accused, D. I. T. Wickramasekara, 1st accused, Ellepola 2nd accused, Applicant Piyadasa 3rd accused, Applicant Panditharathna 4th accused, Applicant Wijekone Banda 5th accused. Driver Wijerathna and Store-Keeper Liyanawadu gave evidence for the prosecution, Judgment of the Magistrates Court Case was produced in evidence R. I. All accused were convicted and sentenced to 6 month R. I. and Rs. 5,000/- fine. Accused appealed to the High Court Kandy case No. Appeal -/61/95. The High Court set aside that judgment of the Magistrates Court Case and ordered a re-trial before another Judge. Applicant Piyadasa stated in evidence that the Police did not proceed with the trial as the 1st witness Engineer Serasinghe died. As such, the Magistrate discharged the accused.

His evidence shows that thereafter, the applicants appealed to the Respondent in writing to re-instate them in service. The Respondent rejected the appeal. No charges were framed against them and no inquiry was held by the Respondent. The Respondent interdicted applicants by A7 letter dated 11.04.1994. His services was terminated by A1 letter dated 14.08.1995. The reason for termination of services was because the applicant was convicted in Magistrates Court Case No. 28417. In evidence in answer to court. Applicant stated that his age is 62 years. As such, he is asking for the relief of compensation and his salary for the period of non-employment.

His cross-examination in evidence shows that the theft of the Cable took place on 07.04.1994. He goes to Colombo to bring goods along with D. I. T. or Store-Keeper. On this occasion the Store-Keeper accept the goods in Colombo. He gets instructions from D. I. T. to go to Colombo orally D. I. T.

or Store-keeper goes to the stores and collect goods, and the requisition is given later, on the date of the incident. D. I. T. gave instruction to bring the Cable from Wattagama Stores. The Cable was issued and he accepted the Cable from the watcher and he signed a book. He took the Cable to Kandy. On instructions from D. I. T. to the driver the Cable was taken in the lorry to Colombo. The Store-keeper went along with him in the lorry to Colombo. The Driver Wijerathna was given instructions to hand over the Cable to Driver Ellapola in Colombo. His evidence shows that the Cable was taken to Colombo with instructions given to the Driver Wijerathna. The lorry was halted near Sugathadasa Stadium. He denied that the Cable was in his charge when it was taken to Colombo. His position is that D. I. T. gave instruction to Driver Wijerathna to hand over Cable to Ellepola. The Cable was to be loaded into a Delica Van but it could not be loaded and a Driver Ellepola brought a lorry and the Cable was loaded into the lorry. The applicant Piyadasa stated that he had no suspicion about the Cable being loaded in to the lorry. He denied that he was involved in the theft of the Cable.

He stated that the Telecom Engineer gives instructions for transportation of Cables from the stores. But, in this instance, the D. I. T. gave instructions to the Driver Wijerathna to take the Cable to Colombo. He stated in evidence that the Engineer never gave instructions to him. In this instance, the D. I. T. gave instructions to him, to take the Cable from Wattagama stores to Kandy. His evidence in that a urgent situations, when the engineer is not available, the Cable can be issued and later approval obtained. He denied in evidence that he was involved in the theft of the Cable. His Cross-examination in evidence shows that D. I. T. Wickramasekera was 1st accused in the Magistrate Court theft case No. 28417. Applicant Piyadasa was 3rd accused, the other applicants Panditharathna and Wijekone Banda were the 4th and 5th accused. the 2nd accused was driver Ellepola. The accused were found guilty and fine Rs. 5,000/- and six months jail. The applicant accused appealed to the High Court. The High court discharged the accused and ordered a re-trial before the Magistrate Court. His evidence shows that at the re-trial the accused were discharged as the 1st witness in this case, died and the Police was not proceeding with the case. Subsequently, the Respondent terminated the services of the applicants letter for termination of services was marked A1 dated 14.08.1995. His Cross-examination shows that he appealed to the Respondent for re-reinstatement. He did not file an application to the Labour Tribunal. He made a complaint to the Labour Department. It was suggested by the Respondent in evidence that he was not entitled to re-reinstatement as he was not acquitted in the Magistrate Court Case. In answer to this suggestion. Applicant stated that he was discharged in the Magistrate Court, he asked the Respondent for the re-reinstatement. The evidence of

Applicant Panditharathna shows that he was appointed to the Post of Labour Grade 3 in the Department of Telecommunication. Later the Department was converted to a corporation. His appointment was from 08.11.1988. He worked in Kurunegala and thereafter in Kandy. He was subsequently promoted to the Grade 2, while working in the Department, an incident relating to the stolen Cable occurred and he was interdicted without wages from service on 07.04.1994. At the time of the incident, the witness was working in the lorry driven, by the lorry driver Wijerathna. His evidence shows that he worked in the lorry on the instructions of driver Wijerathna. His duties as Assistant in the lorry were to check the water, and oil the lorry, and take care of the goods. Regarding the incident relating to the theft of Cable a case was filed in the Magistrate Court against him and the other two applicants. But, lorry driver Wijerathna was not charged in court. Wijerathna was made a Prosecution Witness. The evidence shows that he was found guilty in the Case and he was sentenced to 6 months jail and fined Rs. 5,000/-. He appealed to the High Court and re-trial was ordered by the High Court at the re-trial in the Magistrates Court. he was acquitted along with the other two applicants. His evidence shows that they appealed to the Respondent for re-instatement. There was no satisfactory response by the Respondent. Thereafter, they complained to the Labour Department, there was no settlement and the dispute was referred for arbitration. They further, requested the Respondent to hold an inquiry. No inquiry was held and their services were terminated.

Applicant in evidence related the circumstances relating to the incident. His evidence shows that he was not aware of the theft of the Cable when it was transported in the lorry on the date of the incident. He stated in evidence that his service were unjustifiably terminated.

His Cross-Examination in evidence shows that he worked as as Assistant in the lorry. The driver Wijerathna of the lorry gave him instruction relating to his duties. On the date of the incident on 07.04.1994, the driver Wijerathna gave instructions to him to go to Colombo in the lorry. He was unaware of the reason a Cable Drum was loaded into the lorry. He assisted in the loading of the Cable which was taken from the Wattagama stores and then transported to Colombo. He does not know whether approval was obtained to transport the Cable from Kandy to Colombo on the date of the incident. He had no suspicion on the date of the incident. The other two Applicants went to Colombo with him in the lorry. Applicant Piyadasa took the Cable from the stores. He does not know whether driver was given instruction to take the Cable to Colombo. He does not know whether D. I. T. Wickramasekara gave money to the driver Wijerathna to pump diesel into the lorry. He denied in evidence that no instructions were given

to take the Cable to Colombo. He denied in evidence that D. I. T. Wickramasekara with four others who went in the lorry committed theft of the Cable Drum. He stated in evidence that he was the 4th accused in the Magistrates Court Case. He denied involvement in the charge in the Magistrate Court Case. In evidence he stated that he was terminated from services as he was convicted in the Magistrates Court Case according to letter of termination A 20. He appealed to the high Court and the High Court found him not guilty and a re-trial was ordered in the Magistrates Court. He denied the suggestion in Cross-examination that the High Court did not acquit him but ordered a re-trial of the Case in the Magistrates Court. His position in evidence is in that the sentence by the Magistrates Court was set aside and a re-trial ordered. His evidence is that after the Magistrates Court Case was over he along with the other applicants complained to the Commissioner of Labour. His evidence shows that at the re-trial of the case in the Magistrate Court as there was no evidence against them the prosecution did not proceed with the case. They were discharged in the Case. He denied in evidence that he committed an offence while in employment and as such, his services were terminated and consequently he cannot claim relief from the Industrial Court.

The evidence of Applicant Wijekoon Banda shows that he was charge sheeted along with the other applicants for committing an offence. His evidence is that he was appointed as a Labourer on 02.07.1979 and later promoted to grade 2 as a Labourer from 01.08.1988. He continued in employment in Sri Lanka Telecom Company as a labourer.

His evidence shows that, he along with the other two applicants were charged in the Magistrates Court and they were convicted. They appealed to the High Court and the High Court ordered a re-trial by the Magistrate. To date there is no case proceeding against him. He appealed to the Respondent for re-reinstatement along with the other two Applicants. The Respondent rejected their Appeal. They requested the Respondent to hold an inquiry. The Respondent failed to comply with their request. Thereafter they complained to the Labour Department. There was no settlement and this matter was referred to arbitration. In evidence, he stated that he adopts the evidence given by the other two applicants relating to the facts detailed by them in this matter. In relief he claimed re-reinstatement with back wages.

His Cross-examination shows that their services were terminated relating to an incident of a Cable Drum at the time of the incident on 07.04.1994, he was working as a Skilled Labourer. He worked under Mr. Wickramasekara the D. I. T.. He got instruction regarding his work from the head of the Cable Section. After work, he came to office D. I. T. gave oral

instructions to go to Colombo the following day to bring goods. He went to Colombo with Applicants Piyadasa, Panditharathne, and the lorry driver. He sat in the front seat. He did not know goods belonging to the Respondent, were taken in the lorry. He came to know when the goods were unloaded. The lorry did not stop on the way. The goods were unloaded near Sugathadasa Stadium. He got down from the lorry as the lorry driver Wijerathna told him that the amount he over loaded near Sugathadasa Stadium. There, he came to know that there was Cable Drum in the lorry. He had no suspicion when it was unloaded and on the road. Applicant Piyadasa was the Head Boss. He was in the lorry. He denied the incident was improper and illegal. He stated in evidence in cross-evidence that he got instructions to go in the lorry to bring goods from Colombo. After the incident he came to know that this was irregular, and this was stolen, His evidence shows that a Case was filed in the Magistrates Court. He was the 5th accused in the case. His position in evidence in that the accused were given the opportunity to give evidence. but he accused did not give evidence. His evidence is that he was convicted in the Magistrate Court and his services were terminated. On appeal to the High Court, the High Court set aside the judgment in the case and ordered a re-trial. Thereafter, they did not made an application to the Labour Tribunal, but complained to the Labour Department. His evidence shows that he has the right to claim relief in Arbitration before the Industrial Court.

I have examined the evidence of the applicants taking into consideration the evidence of Applicant Piyadasa. I am of the view that his evidence shows that, while working as Head of the Cable Section, an incident occurred on 07.04.1994. It related to an underground Cable taken from the Wattagama Stores. D. I. T. should order issue of the Cable from the stores with the approval of the Engineer. This was not done, D. I. T. ordered the store-keeper to issue the said Cable from the stores. The requisition to be issued later, He was in office whom the order was made he order was given to the Store-Keeper to issue the Cable to Piyadasa. Lorry Driver Wijeratna was requested to take the lorry and bring the Cable from Wattagama stores to Kandy. The Cable was not unloaded in Kandy. It remained in the lorry, D. I. T. ordered Applicant Piyadasa to go in the lorry with the other Applicants to bring goods from Colombo the following day, 08.04.1994, The lorry driver Wijerathna was requested to hand over the Cable to Driver Ellepola he did not know what happened to the Cable he came back to Kandy and on the instruction of the D. G. M. he gave a statement to the Police.

On his evidence, I am of the views that Applicant Piyadasa complied with the order of the D. I. T. and he went to Colombo stores to bring goods to Kandy, He was not given instructions regarding the Cable Drum.

Driver Wijerathna was given instructions regarding the Cable and he was responsible to comply with the instructions of the D. I. T.

Taking into consideration the evidence of Applicant Panditharathna, I am of the view that his evidence shows that he was appointed as a Labourer Grade 3 and promoted to Grade 2. An incident relating to a stolen Cable occurred on 07.04.1994. He was working as lorry Assistant in the lorry driven by driver Wijerathna and he worked on instruction of the said driver. He was not aware of the theft of the Cable. When it was transported in the Lorry to Colombo on the date of the incident. He denied in evidence that he committed theft of the Cable.

On his evidence, I am of the view that he travelled in the lorry driven by Driver Wijerathna and followed and complied with instructions given by driver Wijerathna,

Taking into consideration the evidence of Applicant Wijekoone Banda, I am of the view that the he was appointed a Labourer on 02.07.1997 and later promoted to Grade 2 as a Labourer from 01.08.1988. He continued in employment in Sri Lanka Telecom Company as a Labourer, He, along with the other two applicants, were charged in the Magistrate Court for theft of a Cable. They appealed to the High Court. The High Court ordered a re-trial. To date, there are no case proceedings against them. He appealed to the Respondent along with the other two Applicants for re-reinstatement. The Respondent rejected the Appeal. They requested the Respondent to hold a disciplinary inquiry. The Respondent did not comply with their request. They complained to the Labour Department. There was no settlement. This matter was referred to Arbitration. His evidence shows that he adopts the evidence given by the other two applicants relating to the incident on 07.04.1994.

His Cross-examination show that he got instructions from the Applicant Piyadasa Head Boss regarding his work. The D. I. T. gave instructions to him on 07.04.1994 to go to Colombo to bring goods. He did not know goods belonging to the Respondent were taken in the lorry. He came to know when the goods were unloaded near Sugathadasa Stadium. He had no suspicion when the Cable was unloaded.

Taking into consideration the evidence of Applicants Piyadasa, Panditharathna and Wijekoone Banda, I am of the view that they acted on the instructions of D. I. T. Wickramasekara on the date of the incident on 07.04.1994. On their evidence I am further of the view that the D. I. T. gave specific instructions to the Driver Wijerathna to take the Cable to Colombo and hand it over to Drive Ellapola, which he did

and complied with the instructions. The said instructions were given orally by the D. I. T. Wickramasekara.

On the evidence, I am of the view that D. I. T. Wickramasekara along with Driver Wijerathan are responsible to the Respondent for transporting the Cable taken from Wattagama stores to Kandy and thereafter to Colombo. I have now to consider the evidence of the witnesses for the Respondent to decide the issues in this case on the probable evidence.

Witness Kumari Godamanna Senior Administrative Assistant Engineer in evidence stated that in the year 1994, she worked in the Cable Section in Telecom Kandy. She was the IPT until April 1994. Her duties were to install Telephones in Kandy town, Applicant Wijekoon Band was a Laburer working in her section.

Applicant Panditharathna was working as Assistant in the Vehicle in the Cable Section. Applicant Piyadasa worked in the Cable Section until 01.04.1994. He was the Head Bass in this Section. Piyadasa was transferred out of the Section on 01.04.1994. witness does not know the reason. The Engineer was Mr. Serasinghe Wickramasekara was the D. I. T. Abeygunawardana was the Manager. Witness came to know that the D. I. T. Wickramasekara and the Applicants were remanded and were accused in a case. Witness came to know this when the Police met D. I. T. on 07th April in the office regarding this matter.

The evidence of this witness shows that she did not know applicant Wijekoone Banda an applicant Piyadasa who went to Colombo with the Drum she knew that a group of workers went to Colombo. In evidence, she detailed the procedure that should be taken when goods are taken from Wattagama stores and brought to Kandy. An applicant on form must be filled with a requisition for the goods taken from the stores and approval should be obtained from the I. P. T. and the D. I. T.

Her evidence in Cross-examination shows that she does not know whether, in this instance, a requisition was given for the issue of the Cable she does not know whether, in the this case M. R. Q. M. form was filled and a request was made to the D. I. T. and approval was given. She cannot say whether the issue of this Cable was against the procedure. It is her evidence that there is a circular regarding the procedure and the D. I. T. and store-keeper are aware of it. The labour is not aware of it. Her evidence shows that she does not know whether there were documents to support the issue and transportation of this Cable her evidence shows, that if the Cable was issued fraudulently, the superior officers were

aware of it, and they should be responsible. The superior officers were aware of the relevant circular and regulations.

Taking into consideration the evidence of this witness, I am of the view that this witness was totally unaware of the circumstances relating to the issue and transportation of this Cable Drum by the Applicants on the date of the incident. On the evidence of this witness, I am further of the view that her evidence only relates to the procedure to be adopted for the issue and transport of the Cable Drum in terms of the circular issued by the Respondent. Her evidence does not prove the guilt of the Applicants relating to the incident. The evidence of witness Chief Administrator Officer Mr. Meril Perera for the Respondent shows that he worked from the year 1982. In 1992, he worked in Kandy as Deputy General Manager in the central province. His evidence shows that a goods for the Wattegama stores is obtained from main stores in Peliyagoda and Maradana. He detailed the procedure to be taken in the district level when goods are necessary. The I. P. T. makes a request from the D. I. T. and approval is obtained from the Engineer. A requisition is filled for the purpose. The Cable section was functioning under the supervision of the Engineer Serasinghe. The Storekeeper at Wattegama stores receives the goods and entries are made in the book maintained in the stores. The store keeper is responsible for the goods in the stores. The store keeper and the watcher are aware of the goods stored in the stores. His evidence shows that in an urgency goods could be taken from the Store keeper on a chit in writing and on the following day. Application should be made and the chit withdrawn, Approval is obtained thereafter. The procedure to be followed is known to all the employees in the establishment. Witness stated in evidence that he personally knows the applicant Piyadasa, Panditharathna, Wijekoone Banda, Piyadasa worked as Head of the section, Wijekoone Banda was a labourer and Panditharathna was the lorry Assistant. His evidence shows that he worked in the Kandy office in the year 1994. An incident relating to the loss of a Cable belonging to the Respondent occurred in April 1994. He cannot remember the date.

He was informed about the incident by the Police and a superior officer. He did not take action, legal action proceeded. He remembers the Police informing him about a Cable Drum taken in a Telecom lorry. He did not take action against the three applicants. When he came to know of the incident, the Police commenced investigation. He received summons in the case filed by the Police and he gave evidence in Court identifying the accused and the productions in Court. His evidence shows that he made inquiries regarding the incident. He related in evidence the details of the incident relating to the removal of the Cable from Wattegama stores and the transport of the Cable from Kandy to Colombo. The applicants were arrested by the Police with the lorry and the

said Cable. In evidence, he stated that no approval was taken for the transportation of the Cable from Kandy to Colombo. His evidence shows that an offence was committed in the transportation of the Cable. In evidence, he produced the copy the proceedings. In the Magistrate Court case No. 28417 filed against the accused marked R6 to R9. He produced in evidence R1 dated 27.03.1995 letter of suspension of the applicants after the decision of the Magistrate Court. He referred to the letter of termination issued to the applicants wherein, their services were terminated as they were found guilty in the Magistrate Court Case and punished, witness was referred to the High Court Appeal judgment wherein the judgement of the Magistrate Case was set aside and re-trial ordered. Witness was referred to the subsequent re-trial order by the Magistrate, where in the applicant (accused) were discharged by the as the Police did not proceed with the case for the reason that witness engineer Serasinghe died.

The evidence of the witness shows that there are workers in sections who work under the head of the section. The head of the section is under the I. P. T. and the I. P. T. is under the D. I. T. The D. I. T. was Mr. Wickramasekera, The D. I. T. is under the Engineer. The Engineer, at the time of the incident was Mr. Serasinghe.

The Cross-examination in evidence of this witness shows that the Applicants were convicted in the Magistrate Court and they appealed to the High Court. The High Court set aside the judgment and sent the case back for re-trial. At the re-trial, the prosecution withdrew the case and did not proceed with the case as the 1st witness died. His evidence shows that the Applicants committed an offence relating to the incident. He does not know whether a domestic inquiry was held against, the Applicants. He agreed that driver Wijerathne who took the goods to Colombo and the driver who took over the goods were arrested. He cannot remember whether the applicants went to the police station the following day and their statements were recorded. He agreed with police report that the applicants were arrested when they made their statements in the Police station and not in Colombo. He denied in evidence that driver Wijerathna who should have been an accused in the Magistrate Court case was released and made a Crown Witness and the Police proceeded with the case. Witness further stated that he was aware that the Applicants were convicted in the Magistrate Court Case. They appealed to the High Court against the conviction. The High Court set aside the Conviction and ordered a re-trial. He cannot say whether there is a High Court or Magistrate Court case pending. His evidence shows that he was working in Telecom Office Kandy at the time of the incident. On the date of the incident the Cable was transported from Kandy in the Telecom lorry to a place near Sugathadasa Stadium in Colombo. Goods from the stores in Colombo were to be transported to Kandy.

He heard from the Police that the Cable Drum was to be handed over to someone in Colombo. He is unaware whether Applicant Piyadasa and the workers went to Colombo to bring the goods to Kandy. He is aware that the lorry with the goods and the people in the lorry were arrested by the Police. His evidence shows that he does not know whether the store keeper Liyanawaduge went to Colombo in the lorry. He is unaware whether the store keeper and Piyadasa and others went in the lorry to bring goods from Colombo. His evidence shows that he is unable to say whether D. I. T. Wickramasekara was responsible for this incident. The Police investigation should reveal this. In Cross examination in evidence, he stated that the applicants were terminated from service on the judgment of the Magistrate Court case wherein they were found guilty. He denied in evidence that there is no valid decision finding the applicants guilty, which has been submitted in evidence. before this Court. He is unaware of the Applicants requesting the Respondent to hold a domestic inquiry. He cannot say whether such inquiry was not held to date. This is done by the Human Resources Division. He stated in evidence that the Police filed action in court and punishment was meted out by court on the Applicants. His evidence shows that he does not know the details of the journey relating to this incident. His evidence shows that he cannot say whether the three Applicants took the Cable or not from Wattegama to Kandy and then to Colombo.

Taking into consideration the evidence of this Witness, I am of the view that he was working, in the Telecom Office in Kandy at the time of the incident in April 1994. As the Deputy General Manager he detailed out the procedure relating to the issue of the goods from the stores. His evidence clearly points to the fact that he was informed of the incident by the Police. He did not take action in the matter. The Police took legal action in the matter. He gave evidence in Court identifying the accused applicants and the production in Court. The evidence of this Witness shows that he is unaware of the detail facts relating to the incident. He gave evidence on facts revealed in the investigation by the Police. On his evidence, I am of the view that he was not personally of officially aware of the facts relating to the incident. I say this for the reason that he referred to the Magistrate Court Case, and stated that the Applicants were found guilty by the Magistrate on the evidence led in the Magistrates Court and the Applicants were punished, resulting in disciplinary action taken by the Respondent to terminate the services of the Applicants.

On the evidence of this Witness, I am of the view that his demeanor in evidence shows that he was evasive in answers given by him in evidence in Cross Examination. He appeared to me that he was clueless on the facts elicited by him in evidence.

For this reason I am of the view that there is no value in his evidence to prove the guilt of the Applicants on the facts relating to the incident.

The evidence of Witness Rodrigo, Manager Human Resources shows that he worked in Telecom for 33 years. He started as a clerk and later as Assistant Senior Executive in the Human Resources Division. He does not know, the Applicants personally. He was not working in this Division at the time of the incident. He worked in this Division for six years. He gave evidence relating to the incident from the connected file. He related in evidence from the file that the Applicants were convicted in Magistrate Court Case No. 28417 and punished. On the conviction in the Magistrate Court Case. The accused applicants were interdicted and terminated from service on 28.07.1995. The applicants appealed against the judgment to the High Court. The High Court ordered a re-trial before another judge. At the re-trial, the Police did not proceed with the case, as the Witness Engineer Serasinghe died. The Magistrate discharged the accused applicants. The applicants then appealed to the Management for re-reinstatement. The Disciplinary Board rejected the appeal. No domestic inquiry was held. The applicants were terminated on the original by the conviction magistrate in the Magistrate Court Case.

Witness referred in evidence of the appointment letters of the applicants. The retiring age of the applicants is 55 years., the extension of services is up to the age of 60 years. At the discretion of the Management a workman convicted by the decision of a Court no extension of service will be given. His evidence shows that the applicant Piyadasa and Wijekoone Banda received their pension after 01.09.1995 when the company Telecom took over the administration. Witness marked documents R17 to R19 showing the amounts the applicants would receive, if they worked up to the age of 60 years.

His evidence in Cross examination shows that the time the incident took place, he was not working in the Human Resource Division. He has now worked for about six to seven months in this Division. The applicants were interdicted on 07.04.1994, and their services were terminated on 28.07.1995, he agreed in evidence that the High Court Judge set aside the order of the Magistrate Court and ordered a re-trial in this matter before another judge - RI dated 13.03.1995 reveals this. His evidence shows that, at the re-trial, the Police did not proceed with the case, as the 1st Witness for prosecution died. He agreed there was no decision in the re-trial punishing the applicants.

Witness stated in evidence that, if a workman was acquitted in Magistrate Court case it is the duty of the Respondent to

hold a Domestic inquiry. His evidence shows that the applicants submitted an appeal on 05.11.2004 to the Management for re-reinstatement, but the Disciplinary Board rejected the appeal considering the fact that the applicants, were convicted in the Magistrate Court. Witness agreed that according to Document R 10, the Disciplinary Board took this decision without holding a disciplinary inquiry against the applicants. His evidence shows that the Department of Telecommunication was converted to a corporation and later a company was formed. The Employees position was not changed. Employees holding position for 10 years were able to retire. Applicants Piyadasa and Wijekoon retired on the basis of 10 years service. Applicant Panditharathna was not eligible to retire as his service was below 10 years. Employees at 55 years were eligible to apply for extension of services up to 60 years. Extension of services was granted on their performance and good conduct and discipline. Applicant Piyadasa was appointed in the year 1974, Wijekoon in the year 1979 and Panditharathna in the year 1988. They were absorbed from the Department of Telecommunication to the Corporation on the same conditions. The applicants were not in service when the company was formed on 26.09.1996. His evidence shows that workmen, who were working at the time the circular dated 30.04.2007 was issued were entitled to voluntary retirement. The age groups indicated is 28 and 60. The circular was issued after the termination of services of the workmen. As such, they were unable to apply to the company for voluntary retirement.

In the Re-examination in evidence, Witness stated that the two circulars P36 and P 37 do not apply to the applicants as these circulars were issued after the termination of their services. After the decision of the disciplinary committee as per document R 10, the applicant did not make application to the LT because they admitted their terminations.

I have examined his evidence. This witness was not working in the Human Resources Division at the time of the incident, his evidence was from the connected file. He stated that the applicants were convicted in the Magistrate Case No. 28417 and punished. Applicants appealed to the High Court. The High Court ordered a re-trial.

At the re-trial, the Police did not proceed with the case, as the prosecution witness engineer Serasinghe died. The Magistrate discharged the accused applicants. His evidence shows that the applicants appealed to the Management for re-instatement. The Disciplinary Board rejected the appeal. No domestic inquiry was held. The services of the applicants were terminated on the original conviction in the Magistrate Court Case.

Taking into consideration the evidence of this witness. I am of the view that the action taken by the Disciplinary Board was wrong. I say this for the reason that the Board should have considered the appeal by the applicants and held a Domestic Inquiry and inquired into the facts of the incident and thereafter taken action necessitated against the applicants. I am of the view that the disciplinary action to terminate the services of the applicants on the conviction in the original Magistrate Court Case was wrong. It is clear in the evidence, that the High Court set aside the conviction and ordered a re-trial in the case. This means that the punishment given by the Magistrate was wiped out. As such, the applicants were not guilty of the offence relating to the incident. This witness Rodrigo agreed in evidence that no domestic inquiry was held, thereafter, on the appeal by the applicants and the services of the applicants were terminated. On the evidence of this witness, and taking into consideration the decision of the High Court. I am of the view that the disciplinary action taken by the respondent was unjustified. I am further of the view that the respondent flouted the principle of natural justice that no man should be condemned un-heard. I say this for the reason that the respondent failed to give a hearing to the applicants on the appeal made by them for re-instatement after the applicants were discharged in the second Magistrate Court Case and no further action was taken against them relating to the incident.

In re-examination in evidence witness Rodrigo stated that after the decision of the disciplinary board, the applicants did not make application to the Labour Tribunal, because they admitted their termination, I am of the view that this statement by witness in evidence is erroneous. I say this for the reason that the applicants have the right either to seek relief in the Labour Tribunal or in the alternative to seek relief in Arbitration in the Industrial Court the applicants chose the alternative relief. At the outset, they complained to the Labour Department. The Labour Department held an inquiry and as the matter in dispute, was not settled it was referred to in arbitration before the Industrial Court. It is my view that the applicants rightly sought their alternative relief available to them in Arbitration before the industrial court. As such, I reject this statement in evidence given by witness Rodrigo.

I have examined the total evidence in this case, both oral and documentary along with the written submissions of the parties. As stated by me earlier in this award, applicant Piyadasa complied with the order of the D. I. T. and he went to the stores in Colombo to bring goods to Kandy. He received no instructions regarding the Cable Drum on his evidence. I hold that driver Wijerathne received instructions from the D. I. T. regarding the Cable Drum and he was responsible to carry out instructions of the D. I. T.

Taking into consideration the evidence of the applicants, Piyadasa, Panditharathna and Wijekoon Banda I hold that they acted on the instructions of the D. I. T. Wickramasekara on the date of the incident, on 07.04.1994, I further hold that driver Wijerathne, who received specific instructions from the D. I. T. Wickramasekara, to take the Cable Drum to Colombo from the Wattegama Stores, along with the D. I. T. Wickramasekara are responsible for the transportation of the Cable.

For the reasons stated by earlier in this award, I hold that the evidence of Kumari Godamanna Senior Administrative Assistant Engineer of the Respondent, points to the fact that she was not aware of the circumstances relating to the issue of the transportation of the Cable Drum on the date of the incident. She gave evidence only on the procedure for the issue and transportation of the Cable Drum in terms of the circular issued by the Respondent, Her evidence does not prove the guilt of the applicants relating to the incident.

For the reasons given by me earlier in this award, on the evidence given by Meril Perera, witness for the respondent, I hold that his demeanour in evidence shows that he was evasive in answers given by him in Cross examination. As such, I further hold that he was clueless on the facts in evidence given by him. There is no value in his evidence to prove the guilt of the applicants on the facts relating to the incident.

For the reasons given by me earlier in this award, I hold that the evidence of Mr. Rodrigo, Manager Human Resources points to the fact that the disciplinary board decided to terminate the services of the applicants without holding a domestic inquiry against the applicants relating to the incident. The disciplinary board decided to terminate the services of the applicants purely on the original conviction in the Magistrate Court. On the evidence, I hold that this decision was wrong, as the original conviction in the Magistrate Court was set aside by the High Court, As such, there was no punishment meted out to the applicants relating to the incident.

Taking into consideration the evidence as a whole, and on the balance of evidence, and the preponderance of probabilities, I hold that the action taken by the Respondent to terminate the services of the Applicants was wrongful and unjustifiable. I have now to consider the relief the applicants are entitled to, for their wrongful and unjustifiable termination of services.

It is in evidence that applicants Piyadasa was appointed on 09.01.1974 and served a period of service of 21 years and 06 months.

Applicant Wijekoon Banda was appointed on 02.07.1979 and served a period of service of 26 years.

Applicant Panditharathna was appointed on 08.12.1988 and served a period of service of 6 years and 7 months.

I consider the evidence and the facts and circumstances in this instant case, and I hold that the relief to be granted to each of the applicants is not re-instatement in service but, the alternative of compensation in lieu of re-instatement.

I have examined the principles laid down by the Supreme Court regarding the issue of compensation in the cases of Ceylon Transport Board Vs Wijerathne 1975 77NLR4 481, Jayasooriya Vs Sri Lanka State Plantation Corporation (1995) 2SLR 379, Henderson and Company Vs Wijethunga (SC 33/75 SC Minutes of 21st March, 1975) and Ceylon Planter's Society on behalf of C. G. P. Weerasinghe Vs Bogawanthalawa Plantations LTD SC Appeal No. 82/2002 - HCA LT 88/96LT-10/304/93. Applying the principles laid down in these cases to the particular facts and circumstances in this case. I hold it just and equitable to award compensation to each of the workmen on the basis of salary particulars submitted by the applicants and respondent as set out below :

1. Workman Panditharathna has a period of unbroken service of 6 years and 7 months, which is below 10 years. I hold it just and equitable to Award Him five years salary. His last drawn salary basic Rs. 2020/- and CLA Rs. 2620/- His consolidated salary is Rs. 4,640/-

On this basis, he is due Rs. 2,78,400/- as compensation.

2. Workman Piyadasa has a period of unbroken service of 21 years and six months, which is over ten years. I hold it just and equitable to award him seven years salary. His last drawn salary basic Rs. 2685/= CLA - Rs. 2620/= consolidated salary is Rs. 5,305/= on this basis, he is due Rs. 4,45,620/= as compensation.

3. Workman Wijekoon Banda has a period of service of 26 years which is over ten years.

I hold it just and equitable to award him seven years salary, His last drawn salary basic Rs. 1990/=, CLA - Rs. 2620/=, consolidated salary is Rs. 4610/= on this basis, he is due Rs. 3,87,240/= as compensation.

The applicants are entitled to claim statutory dues, if any, such as arrears of salary, gratuity, EPF, ETF and other fringe benefits, if any, due to them on their respective contracts of

employment, direct with the respondent or before the Labour Department.

Accordingly, I award applicant Piyadasa compensation in the sum of Rs. 4,45,620 as compensation, Applicant Wijekoon Banda compensation in the sum of Rs. 3,87,240/-

Applicant Panditharathna compensation in the sum of Rs. 2,78,400/-

The total sum due to the said applicants in compensation is the sum of Rs. 1,111,260/-

I order the Respondent Sri Lanka Telecom LTD to deposit the total sum of Rs. 1,111,260/- due to the Applicants in

compensation with the Assistant Commissioner of Labour Kandy South within two months, from the date of publication of this award in the Sri Lanka Government Gazette. The said applicants are entitled to withdraw the sum of money due to them respectively after the total deposit is made with the Assistant Commissioner of Labour Kandy South, I hold that this award is just and equitable and I make the said award accordingly.

K. R. M. N. Lawrentz,
Arbitrator.

30th April, 2013.

07 - 20