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The Gazette of the Democratic Socialist Republic of Sri Lanka
EXTRAORDINARY

අංක 2277/41 – 2022 අප්‍රේල් 27 වැනි බදාදා – 2022.04.27
No. 2277/41 – WEDNESDAY, APRIL 27, 2022

(Published by Authority)

PART I: SECTION (I) – GENERAL

Government Notifications

My No.: IR/COM/03/2018/203.

THE INDUSTRIAL DISPUTES ACT, CHAPTER 131

THE award dated 20.02.2022, transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between Group of employees including Mr. J. P. S. Kumara Senadheera, No. 308/A, 500 Acres, Bodhiraja Mawatha, 2nd Lane, New Town, Polonnaruwa 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 the *Gazette Extraordinary* No. 2135/14 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.
08th April, 2022.



In the matter of an Industrial Dispute

Between,

Group of employees including
Mr. J. P. S. Kumara Senadheera,
No. 308/A, 500 Acres,
Bodhiraja Mawatha, 2nd Lane,
New Town, Polonnaruwa

of the One Part

Case No. A/74/2019

And

Ceylon Petroleum Storage Terminals Limited,
Nimawa,
Kolonnawa.

*of the Other Part***THE AWARD**

1. The Honourable Minister of Labour and Trade Union Relations by virtue of the power 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 with Industrial Disputes (Special Provisions) Act, No. 37 of 1968 appointed me as Arbitrator by his order dated 24th July, 2019 and referred the following disputes parties to me for settlement by Arbitration.

2. The matter in dispute between the aforesaid parties are:-

"Whether the 7 employees mentioned including Mr. J.P.S. Kumara Senadheera working at the Ceylon Petroleum Storage Terminals Limited have been caused injustice by not being called for the interview held for recruitment to 'Grade B1 Filling Supervisor post' and if so, to what relief they are entitled.

1. J.P.S. Kumara Senadheera
2. Dilan Yasantha Somapala
3. M.G. Buddika
4. K.G.K.R. Swarnatilleka
5. P.G.A.S.K. Abayasinghe
6. P.K.G.R.P. Weeramallawa
7. H.M.S.K. Henayaka

Appearance

3. Mr. K. M. S. Abeyratne, Representative for the party of the First Part,

Ms. Anuradha Jayawardena, Legal Officer, 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. J.P.S. Kumara Senadheera, giving evidence on behalf of party of the 1st part stated as follows.

The witness joined respondent company on 19.05.1997 as Security Assistant, C4 Grade. He was assigned to Anuradhapura Oil Storage in year 2000. He was promoted to Motor Mechanic C4 grade. in 2005 he was promoted to C2 Grade. In 2006 he was promoted as Accounts Investigation Officer B3 Grade. He was transferred to Kolonnawa and remained there till November 2010. In November 2010 he was appointed as Assistant team Leader B 2 Grade. In 2017 there an Internal Notice for promotion to B1 Grade.

Witness said he got all educational qualifications but lacked the required experience. He was not called for the interview.

The witness said himself and the employees who were selected joined to the Respondent Company. in the same period. But when counting the number of years of service for himself and seven others only experience in the field was taken into consideration.

For the employees who were selected and their period of service was counted not by from the date they joined but from the period of their service in their respective department. The witness further said they made request verbally and also in writing to the management but no reply from the management. Thereafter witness said he complained to the Commissioner of Labour.

The respondent's answer was marked as A1. In that answer in paragraph 4 stated as follows.

The Applicants who were not selected has obtained more marks than the applicants who were selected.

The witness said respondent company acted against the contents of documents marked A1 and A2 Therefore witness said great injustice has occurred to him and six other applicants.

Therefore witness prayed that seven of them should be given appointments from the dates others were appointed and place them in the relevant salary scales and allowances.

During the cross examination the witness stated as follows. In 2006 he was appointed an Accounts/Audit Clerk. He further said he has passed G.C.E. (A.L) in Commerce stream and passed in 4 subjects including 2 credit passes. The Applicant was shown internal notice dated 02. 02. 2017 marked R1. He said that according to R1 he should have been completed 8 years and at the time of accepting the applications. he further said he did not complete 8 years of service at the time of accepting the applications. He said he was not called for the interview.

During re examination witness stated as follows. He has 6 years and few months experience. According to A1 experience of other Applicants are follows.

1. L.A. Upasena - 5 years and 9 months.
2. J.K. Maharachchi - 5 years 9 months.
3. P.U.S.J.T. Peiris - 5 years 9 months.
4. R.M.T. Ratnayake - 5 years 9 months.
5. G.A.L. Dammikka - 11 years

Mr. M.G. Buddika in his evidence stated as follows.

His present position is Assistant Team Leader B2 Grade. He joined the corporation on 15.10.1998. He was assigned to security division worked 3 years in C4 grade. He was confirmed on 01.10.2001. He was placed grade B 4. He was confirmed to B2 grade on 1-05.2011. He marked document A 3 and said that he has to cover the duties of B 1 grade. He further said when internal notice (R I) was issued he was in B 2 grade.

According to R 1(1) ,the required qualification of the Applicant was B3 or C1 . But at the time the said notice was issued he was in B 2 grade. That time he had 6 years experience.

The 6 Applicants who were given appointments without interviews and their experience of the field was below 6 years. He was called for the interview and therefore he did not get the next grade.

Mr. Dilan Yasantha Somapala in his evidence stated as follows.

He joined the corporation as Assistant Team Leader C4 grade on 01-10-2001. He was promoted to B3 Grade from C3, According to A3-list of duties he has to further cover duties of B1 grade other than the B2 grade. He further said though he applied for B1 grade he was not called for the interview and therefore he did not get the next grade.

He joined the corporation as Assistant Team Leader C4 Grade on 01-10. 2001. He was promoted to B3 grade from C3. According to A3 list of duties he has to further cover duties of B1 grade other than the B2 grade. He further said though he applied for B1 grade he was not called for the interview. The witness further said the 5 employees who were given appointments under the internal notice had field experience 5 years and 9 months only. But witness said says he had 6 years experience, but not called for the interview.

Assistant Team Leader Mr. H.M.S.K. Hennayake in his evidence stated that he was also not considered to be from Grade B2 to B1 Team Leader. He further said he has 6 years experience in B3 Grade and also 10 years of field experience.

Dilan Yasantha Somapala in his evidence stated as follows. His present position is Team Leader B2, and joined on 01/10/2001 as Security Assistant. C4. In 2008 he was a Fire man C3 grade. In 2010 promoted to B3, after 1 year period promoted to B2, Team Leader. He further said though he had qualifications to be promoted to B1 grade his Application was not entertained for the interview. Thereafter he complained to the Employer. And later to the Commissioner of Labour.

During the Cross examination, the witness said his experience as a Team Leader was 6 years and 3 months and therefore not called for the interview.

H. M. S. K. Hennayake in his evidence stated as follows. He joined the Respondent Company 01/09/1999 as C 4 grade as Fireman later promoted to B 3 team leader on June 2010 later promoted to B 2 Team Leader.

He said he applied for the B1 Grade but was not called for the interview.

During Cross Examination he said on the date application was accepted his experience of B3 grade was 6 years. (2010.11.01 to to 2017.02.15)

During Re- examination he said the appointments were given to others having less experience than the Applicants except Mahinda.

P. G. A. S. Kumara Abeysinghe in his evidence stated as follows.

He joined the respondent Company on 15-10-98 for C4 grade, promoted to B3 grade 01/05/2006 as Audit Inspector.

Assistant Team Leader (training) on 01/11/2010. He applied for B1 grade as per R 1 (Internal Notice). He was not called for the interview.

He joined the respondent Co- operation as 15-10-98 for C 4 grade and promoted to B3 grade on 1/5/2006 as an Audit Inspector. On 01/11/2010 he was promoted to Assistant Team Leader (Training) 01/11/2010. He applied for B1 grade as per R I (Internal Notice). He was not called for the interview.

During Cross Examination witness said.

According to R I, qualification needed was 3 years of supervisory capacity and 8 years of experience. He said as at 15/02/2017, on the closing date of applications 15/02/2017 his experience was 6 years. He got through A. Levels and had 6 years experience in supervisory capacity. He further said he had the highest qualifications among the Applicants. The appointments were given to people who has less experience.

I Re- Examination witness said except one out of 5 persons who was given appointments no one had 8 years experience.

Ms.Pathberiya, Deputy Human Resource Manager in her evidence stated as follows. She said notice was issued on 02.02.2017 for calling applications for the interview and 20 applications were received. Out of 20 only 5 were met the basic qualifications and they called for the interview. Initially 2 were selected namely G.L.Dhammika and M.T.C. Ratnayake.

Balance 3 were selected after the recommendation of the committee headed by the Managing Director.

She further said all 3 applicants who were security Supervisor B-3 grade was called for the interview.

But Post of Security Assistant was not considered as it was not a Supervisory Post. Team Leaders Training period was taken into consideration but was not sufficient.

Non of the Applicants had 8 years experience.

Both parties have filed written submissions .

Applicants in their written submissions stated as follows.

The Respondent has violated fundamental rights of the Applicants by stating criteria for the application were B3 and C1 grade could for B1 grade (page 26 of evidence) Whereas when considering promotion to B1 grade Applicants should be from B2 Grade. If there are no B2 Grade Applicants , B3 grade Applicants should be considered.

Applicants further stated the Respondent main witness Deputy H.R. Manager has given marks to 5 applicants prior to the interview in order for them to reach 40 marks level. Whereas interview board has given not more than 15 marks.

The Respondent in their submission stated that the Applicants were selected without any injustice. Selection Criteria was

1. B 3 or C1
2. G.C.E A/L 2 passes including 3 years experience in supervisory grade in 8 years experience.

In overall analysis of evidence I have come to following conclusions.

The Respondent has acted maliciously towards the applicants as the B2 Grade was not considered to be promoted to B 1 grade in the selection Criteria. The Respondent has acted maliciously towards the Applicants as the selection Criteria was predesigned to suit the persons who were called for the interview. (eg. Selection Criteria was B 3 or C1 instead of B I Grade.

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 o 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.

For the reasons aforesaid it is my finding that the Respondent Company (party of the second part) has caused injustice to the applicant.(party of the First part).

In the circumstances taking into consideration the totality of evidence led before me I make award that the party of the First part (the Applicants).

(a) Be promoted to B1 grade with effect from 01.07.2017.

(b) Be paid any loss of salary , and allowances (Less Over Time) which were entitled to the 7 Applicants for the above period as follows.

6A

I කොටස: (I) ඡේදය - ශ්‍රී ලංකා ප්‍රජාතාන්ත්‍රික සමාජවාදී ජනරජයේ අති විශේෂ ගැසට් පත්‍රය - 2022.04.27

PART I: SEC. (I) - GAZETTE EXTRAORDINARY OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA - 27.04.2022

J.P.S. Kumara Senadheera	Rs.127,040.00
Dilan Yasantha Somapala	Rs.124,020.00
M. G. Buddika	Rs.108,769.98
K.G.K.R. Swarnatilleka	Rs.127,050.00
P.G.A.S.K. Abayasinghe	Rs.124,020.00
P.K.G. R.P. Weeramallawa	Rs. 122,200.00
H.M.S.K . Henayaka	Rs.142,635.00

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.

And the aforesaid money should be deposited by the Party of The Second Part at the office of the Labour Commissioner of Colombo Central.

I consider this award just and equitable.

KAPILA M. SARATHCHANDRA,
Arbitrator.

20th February, 2022.

EOG 4-0202